DOCUMENT RESUME

ED 348 274 SO 022 088

TITLE	Oversight Hearing: Office for Civil Rights, Department of Education. Hearing on Reviewing the Activities of the Office of Civil Rights, Department of Education, before the Committee on Labor and Human Resources, United States Senate. One Hundred Second Congress, First Session (May 17, 1991).
INSTITUTION	Congress of the U.S., Washington, D.C. Senate Committee on Labor and Human Resources.
REPORT NO	ISBN-0-16-035469-2; Senate-Hrg-102-170
PUB DATE	91
NOTE	137p.; Contains portions of small/light print.
AVAILABLE FROM	U.S. Government Printing Office Superintendent of Documents, Congressional Sales Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC06 Plus Postage.
DESCRIPTORS	*Civil Rights; *Educational Policy; Elementary Secondary Education; *Equal Education; Federal Government; Government (Administrative Body); Government School Relationship; Hearings; Higher Education; *Racial Discrimination
IDENTIFIERS	Congress 102nd; *Department of Education

ABSTRACT

This document contains the record of a hearing designed to review the policies of the Office for Civil Rights of the U.S. Department of Education toward minority school children, with a particular focus on the practice of ability grouping and the labeling of children as "slow" or "dumb" by placing them in particular classrooms. The document includes the prepared statements of Senator Paul Simon (presiding), Senator Edward Kennedy, Senator Brock Adams, Michael L. Williams (Assistant Secretary for Civil Rights, Department of Education), and Franklin Frazier (Director of Education and Employment Issues, Human Resources Division, U.S. General Accounting Office). The document also contains an index of documents in the Office of Civil Rights Codification System (as of April 3, 1991), communications directed to Senator Simon and others concerning the problems at issue, and questions and answers between Senator Simon, Michael Williams, and Franklin Frazier. (DB)

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S. HRG. 102-170

OVERSIGHT HEARING: OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

ED348274

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

REVIEWING THE ACTIVITIES OF THE OFFICE OF CIVIL RIGHTS, DEPARTMENT OF EDUCATION

MAY 17, 1991

Printed for the use of the Committee on Labor and Human Resources

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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46-194 WASHINGTON : 1991

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Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
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OVERSIGHT HEARING: OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

FRIDAY, MAY 17, 1991

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 1:04 p.m. in room SD-430, Dirksen Senate Office Building, Senator Paul Simon, presiding.

Present: Senator Simon.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. The hearing will come to order. Thirty-sevem years ago today, the U.S. Supreme Court decided in Brown v. Board of Education that "to separate minority children from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

One of the issues that we are going to be discussing today is a different kind of segregation, segregation that is also very damaging, and that is the labeling of children as slow or dumb by placing them in particular classrooms.

I remember some years ago when I was Lieutenant Governor of Illinois I came outside to meet a group of children, and I asked one of them, what grade are you in? He said, "I'm in the fourth grade." He said, "we're the dumb class." I will never forget it. It just hit me like a bolt. We have to take a look at what we are doing.

I also want to issue the Assistant Secretary on the whole question of what we are doing on minority scholarships. While the Office of Civil Rights was not taking action on a problem for which there is evidence of widespread problems, the agency did take action on an issue for which there is no evidence of a problem.

December's press release on minority scholarships destroyed hope for thousands of youth in this country. Secretary Alexander has since announced that the December actions should be ignored while the Department conducts a thorough review of the minority scholarship policy.

While the Secretary's action was welcomed, it is like instructing a jury to disregard a confession of guilt. It can't be ignored, and the damage of the press release cannot be reversed by saying that we will temporarily return to the pre-December policy.

In March, I met the director of the country's largest private scholarship program for minority engineers, the National Action Council for Minorities in Engineering. African-Americans, Hispanics, and American Indians are 27 percent of the college-age population, but receive only 6.5 percent of engineering degrees. The percentage of advanced degrees is even lower.

Minority scholarships are a small but effective encouragement for those students, a welcome mat. But because of the controversy on this issue, some businesses have stopped contributing to this group. Whatever results from Secretary Alexander's review of this policy, we cannot make up for that step backward.

Unfortunately, the minority scholarships press release is not the only disturbing signal from the Department of Education. On April 11th, Secretary Alexander issued a decision questioning the Middle States Association of Schools and Colleges on its commitment to diversity.

And here, let me add the whole question of the Department of Education getting involved in accreditation was done to make sure that we had quality. It was frankly done particularly to look at proprietary schools where we had some problems.

The Department of Education has been very anemic in terms of assuring quality through accrediting bodies. But then all of the sudden the Department moves into an area of questioning the wisdom of diversity, when I think properly an accrediting agency should be there.

I would add, I think there is a question whether the Department of Education violated the statute in what it is doing there. "No provision of a program"—and I am reading from the statute now—"no provision of a program administered by the Secretary or by any other office of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over—any accrediting agency or association."

The Secretary's statement was much too broad, criticizing diversity efforts with loaded words like "quotas," "dictate," and "social agenda." That was clearly unnecessary. My hope is that the Department will correct this, and if it doesn't correct it, we will have to do it either through legal action or through change in the statutes.

The minority scholarships fiasco is only part of the tragedy at the Office for Civil Rights. Frankly, when Ronald Reagan tried to abolish the Department of Education, he decimated much of the work at OCR.

While complaints increased, staffing decreased, and turnover has been high. It took President Bush over a year to appoint an Assistant Secretary, and the agency still hasn't climbed out of the hole.

As Michael Williams said at his confirmation hearing, which I chaired last May 23, the Office of Civil Rights is a law enforcement agency. The agency's purpose, in the words of Secretary Williams, is to search out and correct illegal discrimination in education.

The Office of Civil Rights handles thousands of complaints, but an important measure of its responsibility to search out discrimination is the number of compliance reviews—investigations based on information other than complaints that the agency receives.

Even during the Reagan administration, the Office of Civil Rights started at least 150 reviews each year. Under President Bush, 138 were started in fiscal year 1989, only 32 were started during 1990, and during the first 5 months of this fiscal year, the Office of Civil Rights has started only one compliance review. If you can just take a look, this chart right here shows the compliance reviews, and it is a pretty dismal record.

I am hoping that on December 4, 1990—the day of the Fiesta Bowl press release, the Office of Civil Rights hit bottom and is now on its way up.

There is one area where the Office of Civil Rights has taken some action. I asked Mr. Williams about it when he was up for confirmation, and I am pleased that action has been taken. That is the problem of discrimination against Asian-Americans in college admissions, and we will be taking a look at that.

[The prepared statements of Senators Simon, Kennedy, and Adams follow:]

PREPARED STATEMENT OF SENATOR SIMON

Thirty-seven years ago today, the Supreme Court decided in *Brown* vs. *Board of Education* that "to separate [minority children] from others of similar age and qualifications' solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." One of the issues that we will talk about today is a different kind of segregation, a segregation perhaps even more damaging than separate schools. That is the labeling of children as "slow" or "dumb" by placing them in particular classrooms. All too often, minority students, or students with limited-English proficiency, are placed disproportionately in special education classes or in classes where they are not challenged. As the *Brown* court quoted, "A sense of inferiority affects the motivation of a child to learn," and that effect on a child's heart and mind can be permanent.

It is clearly time to re-examine tracking and ability grouping, regardless of the discrimination issues involved. I was visited by a class from Edwardsville, Illinois, a few years ago. I asked them what class they were, and they told me, "We're in the fourth grade. We're the dumb class." We have to be careful when we categorize people, to make sure that it helps them, not hurts them. Many education groups have recently come to that same conclusion. One of the most notable is the National Governors Association, the people who gave us the National Education Goals. In their strategies report released last year, one goal is to "Challenge educators to eliminate ability grouping and tracking:"

Schools must challenge all students to meet high standards. Yet ability grouping in the elementary grades and tracking in the secondary grades prevent this, especially for students placed in the lower groups. There, low expectations become self-fulfilling prophecies and limit students' access to challenging material or instruction. Once placed in lower tracks, few students ever move up.

By high school, the consequences of tracking are particularly devastating for students in the general track, who find themselves

unprepared for either work or postsecondary education. For all students, artificial barriers between academic and vocational curriculum and between theoretical and applied learning must be removed.

Eliminating these practices does not require ending special opportunities for students, such as gifted and talented or Advanced Placement courses. Nor does it mean abandoning special education or remedial programs for those who need additional services or assistance.

However, assignment to these or other instructional opportunities should not permanently label individuals, or place enduring limits on their access to learning opportunities. And educators should be encouraged and assisted to develop new or use available instructional practices—such as peer tutoring, cooperative learning, or reciprocal teaching—that capitalize on the diversity of students' talents, rather than segregating by ability levels.

I wish I could say that the Federal Government has a respectable record of battling racial discrimination in tracking and ability grouping. But a report from the General Accounting Office, which we will hear about today, finds instead that the Education Department's Office for Civil Rights has failed to protect students from in-school discrimination. OCR has not acted even though it has information about problems in specific schools. In the few cases where problems were investigated, similar cases ended up with different conclusions. And where schools were found to be discriminating, OCR's follow-up was almost non-existent.

The Assistant Secretary for Civil Rights, our first witness today, has professed an interest in addressing the problem of discrimination in ability grouping and tracking. It remains to be seen whether these words will be translated into action.

Minority Scholarships

While OCR was not taking action on a problem for which there is evidence of widespread problems, the agency did take action on an issue for which there is evidence of a problem.

December's press release on minority scholarships destroyed hope for thousands of youth in this country. Secretary Alexander has since announced that the December actions should be ignored, while the Department conducts a thorough review of the minority scholarship policy. While the Secretary's action was welcome, it is like instructing a jury to disregard a confession of guilt. It can't be ignored, and the damage of the December press release cannot be reversed by saying that we will temporarily return to the pre-December policy. In March, I met the director of the country's largest private scholarship program for minority engineers (the National Action Council for Minorities in Engineering, or NACME). African Americans, Hispanics and American Indians are 27 percent of the college age population, but receive only 6.5 percent of engineering degrees—and the percentage of advanced degrees is much lower. Minority scholarships are a small but effective encouragement for those students, a welcome mat. But because of the controversy on this issue, some businesses have stopped contributing to NACME..

Whatever results from Secretary Alexander's review of this policy, we cannot make up for that step backward.

Unfortunately, the minority scholarships press release is not the only disturbing signal from the Department of Education. On April 11, Secretary Alexander issued a decision questioning the Middle States Association of Schools and Colleges on its commitment to diversity. There may be some process or technical issues that Middle States needs to address. But the Secretary's statement was much broader, criticizing diversity efforts with loaded words like "quotas," "dictate," and "social . agenda." That was clearly unnecessary, and sent another message from the Federal Government that, as far as higher education goes, "minorities need not apply." I think the Department has over-stepped its authority in its objections to the Middle States guidelines, and I intend to see what Congress can do to address that problem.

The minority scholarships fiasco is only part of the tragedy at the Office for Civil Rights. Frankly, when Ronald Reagan tried to abolish the Department of Education, he decimated OCR. While complaints increased, staffing decreased, and turnover has been high. It took President Bush over a year to appoint an Assistant Secretary, and the agency still hasn't climbed out of the hole. As Michael Williams said at his confirmation hearing, which I chaired last May 23, OCR is a law enforcement agency. The agency's purpose, in his words, is to "search out and correct" illegal discrimination in education. OCR handles thousands of complaints, but an important measure of its responsibility to "search out" discrimination is the number of "compliance reviews"—investigations based on information other than complaints—that the agency does. Even during the Reagan administration, OCR started at least 150 reviews each year. Under President Bush, 138 were started in fiscal year 1989, only 32 were started during 1990, and, during the first five months of this fiscal year, OCR has started only compliance review. That is a tragedy.

I am hoping that on December 4, 1 990,—the day of the Fiesta Bowl press release—OCR hit bottom, and is now on its way up.

There is one area where we have seen some action by OCR, and that is the problem of discrimination against Asian-Americans in college admissions. I brought up this issue at the Assistant Secretary's confirmation hearing, and I praise him for investigating the problem. I look forward to OCR finishing the pending investigations. At that time, I will take a closer look at the issue, to review some of the questions that have been raised about the reports.

OCR can play an important role in meeting the National Education Goals, in eliminating discriminatory tracking, and addressing other important issues. I am hoping that what we hear today will convince us that OCR is up to that challenge.

PREPARED STATEMENT OF SENATOR KENNEDY

Today's hearing is another step in our pursuit excellence and diversity in education. The Office for Civil Rights within the Department of Education is charged with the responsibility of ensuring that educational institutions that receive federal funds comply with federal civil rights statutes, including Title VI of the Civil

Rights Act of 1964. Title VI prohibits discrimination on the basis of race, color, and national origin. These laws are designed to insure that all of our students have an equal opportunity to obtain an education. Unfortunately, OCR has been remiss in its responsibilities. If we are to be successful in our pursuit of educational excellence, we must ensure that all of our students, regardless of their race, have an opportunity to excel.

According to data collected by OCR, many of the Nation's schools have racially disproportionate classrooms. This indicates that our schools are ability grouping or tracking minority students in a discriminatory manner. Often, for example, limited English proficient students are misdiagnosed as learning disabled when in fact they simply need an opportunity to understand the material they are being taught. Although OCR is required to conduct investigations whenever there is evidence of such discrimination, since 1985, OCR has conducted only one compliance review related to ability grouping or tracking. Perhaps upon careful examination we will decide that ability grouping should be eliminated from our educational system. In the meantime, we must make sure that our students are not suffering because of such practices. OCR must improve its enforcement activities in order to effectively combat this type of discrimination.

In addition to combatting discrimination in our elementary and secondary schools, OCR plays a critical role in increasing and equalizing the access of our minority students to institutions of higher education. We all recognize the importance of educating and training our students today if we are to have a competitive workforce tomorrow. Unfortunately, OCR recently set us back in this endeavor when they announced via a press release that minority scholarships are in violation of Title VI. Secretary Alexander, in one of his first actions as Secretary of Education, rescinded this announcement and initiated a thorough review of the minority scholarship policy. The chilling effect resulting from this announcement, however, has had an unfortunate effect on the aspirations of many of our youth. We must now find ways to reach out to these students and correct the false impression that the Federal government does not want them to pursue a higher education. We must also make sure that OCR never makes this type of mistake again.

The Office of Civil Rights has the important responsibility of ensuring that all American students have an equal opportunity to obtain an education. This hearing is an important part of the oversight responsibility of Congress, and I look forward to working with the agency to achieve the goals we share.

Prepared Statement of Senator Adams

Mr. Chairman, I want to thank you for holding this important oversight hearing on the Office for Civil Rights of the Department of Education.

The Administration's statements on the issue of equal educational opportunity have been deeply troubling to me. Last December, the Assistant Secretary for Civil Rights questioned the legality of minority scholarships. Recently, Secretary Alexander challenged the need to diversify student bodies and faculties. The Administra-

tion's message is clear: the Department is not committed to removing discriminatory barriers to educational opportunity and achievement.

I have serious concerns about the Office of Civil Rights' ability to enforce nondiscriminatory education policies and practices in our nation's schools. OCR has woefully failed to fulfill its mission of investigating complaints of illegal discrimination in the education system and holding compliance reviews. Its lack of vigor in pursing these functions reflects the Administration's general antipathy toward the education of minority and other educationally disadvantaged students and families.

In testimony today, the Government Accounting Office will report on the serious issue of in-school discrimination created by unnecessary ability grouping and tracking of elementary and secondary school students. Ability grouping and tracking-assigning students to special classes on the basis of assessed ability—sounds innocuous on its face. In some cases, this is an appropriate response to a student's educational needs. But it can also allow schools to segregate classrooms by placing minority students and students of limited English proficiency in lower ability classes or special education programs. GAO's research has revealed that approximately 10 percent of, or roughly 1,700, middle schools ability-group their students in a possibly discriminatory manner.

Discriminatory tracking and ability-grouping places even greater burdens on students who face violence at school, unsafe facilities, and outmoded equipment and materials. If we do not have high expectations for our nation's students, they will not have high expectations for themselves.

I urge the Office of Civil Rights to investigate diligently all educational discriminatory policies and practices and thereby help us achieve the national education goals. I will work with my colleagues on the Committee on Labor and Human Resources and in the Senate to make sure that it does.

Senator SIMON. We are pleased to have as our witness today the Assistant Secretary, Mr. Michael Williams, who was here on another occasion about 2 weeks ago or 3 weeks ago, and we ended up with all kinds of problems on the floor. I apologize to you, Mr. Williams, for the problems we faced on that occasion. We will be happy to have your statement at this point.

STATEMENT OF MICHAEL L. WILLIAMS, ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION, WASHINGTON, DC

Mr. WILLIAMS. Senator Simon, thank you. This is indeed the 37th anniversary of the seminal case, Brown versus Board of Education. Today, I think we have the opportunity to talk about what I would call progress. It is a progress that the Office of Civil Rights has made in the last 9 months toward approaching the promise of Brown versus Board, which is to provide equal access to a quality education of all America's students.

In your opening statement, we had an opportunity to talk about a number of activities of the office, and it reminds me of a situation that I used to see with my grandmother every other Saturday

morning. I would have the occasion to eat breakfast with her, and she would be cooking pancakes. You notice that in the course of cooking pancakes, you turn them both on both sides, and you cook them very well on both sides, because you have to pay attention to both sides.

There is a lesson in that, and that is that there are two sides to the pancake. I hope during the course of this hearing we see that there are two sides to the experience of the Office of Civil Rights.

I would like to sort of tick off a couple of the items that show the progress that has been made in the Office of Civil Rights during the last 9 months. In the course of the office, the OCR's primary activity is and always has been the investigation of complaints of discrimination in a timely manner.

Since the March 1988 passage of the Civil Rights Restoration Act, OCR's complain load has increased dramatically. The 3,382 complaints received in fiscal year 1990 represent a 71 percent increase over the number received in fiscal year 1987, the last full fiscal year before the passage of the Act.

Complaint receipts now exceed any previous level in the agency's history. As a result, for the past 3 years, complaints investigations have consumed virtually all of OCR's discretionary resources. This fiscal year is no different, but we are still carrying out the business of conducting thorough complaint investigations in a timely manner.

There has also been concern in the past that OCR was not a focused and balanced agency, that we did not have clear establishment of priorities, that we did not develop and disseminate policy on critical civil rights issues, and that we were not aggressively enforcing the civil rights statutes.

So as some may recall, on December 11, 1990, I issued what was then the first national enforcement strategy for the Office of Civil Rights. That strategy is to cover our activities for the fiscal years 1991 and 1992.

Three highlights of that strategy are to integrate our compliance program, those activities being our policy development, staff training, the conduct of compliance reviews, the provision of technical assistance, and policy dissemination.

Another aspect of that is to provide an emphasis to the monitoring of correction plans. And the third is to restructure OCR to make it into a more effective agency.

You have been kind enough to provide a listing and a chart that highlights the high priority issues for the fiscal year 1991 as well as 1992. Those issues, quite frankly, are issues that came about from discussions with members of the education community, the civil rights community, as well as quite frankly members of the Senate and congressional staffs.

I would like to add that those issues are issues that we were not able to address in the normal complaint mix in the Office for Civil Rights and do provide a balanced civil rights enforcement program.

But there are some other aspects and indications of progress in the Office of Civil Rights. In the past in the area of compliance reviews, regional directors were allowed to determine for themselves where compliance reviews were to be conducted. In order to devote more of our discretionary resources to the conduct of compliance

reviews as well as to ensure that those compliance reviews were on the high priority issues of the day, and to ensure that our compliance reviews did not necessarily track what was our complaint load, being that 65 percent of our complaint load is the area of handicapped discrimination, we have directed our regional directors to conduct compliance reviews from the list of high priority issues.

So, contrary to in the past, this year 85 percent of our compliance reviews will be in those areas of race, national origin, and sex, which is a vast difference from the way compliance reviews were conducted in the past.

With regards to the area of policy deployment and dissemination, a critical aspect of the Office of Civil Rights is indeed the provision of policy guidance and interpretation to educators and administrators around the country. We are currently developing policy as it relates to those issues on our list of high priority issues.

One of the last items is one that I have to admit that I am probably most proud of, and that relates to the budget for the Office for Civil Rights.

The budget for the Office for Civil Rights, through the leadership of the current administration and with the agreement of the Department of Education as well as the White House, has presented a budget that would increase our resources by $7.5 million for fiscal year 1992 that would provide us additional resources in terms of full-time personnel, an addition of 35, and would allow us to begin the building process, or continue the building process of making OCR a more effective civil rights agency.

With that, I am available for your questions.

[The prepared statement of Mr. Williams follows:]

DEPARTMENT OF EDUCATION

WRITTEN STATEMENT BY

MICHAEL L. WILLIAMS
ASSISTANT SECRETARY FOR CIVIL RIGHTS

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) was an agency facing enormous problems when I arrived as Assistant Secretary for Civil Rights last July. The huge, unprecedented, and ever-increasing complaint work load was absorbing OCR's resources and energy. Budgetary constraints that had their origin in the expanding complaint load were so severe that concerns were raised about whether OCR could make it through the fiscal year without violating the Anti-Deficiency Act or having to furlough employees. Only activities that were directly related to the processing of complaints could be funded. All other activities, including compliance reviews, technical assistance outreach efforts, surveys, staff training, and acquisition of computer equipment, were halted.

Detailed below are my efforts since taking office last July to marshall the agency's scarce resources, to carefully define our priorities, and to rebuild an effective civil rights enforcement program.

COMPLAINTS

OCR's primary activity is, and always has been, the investigation of complaints of discrimination in a timely manner. Since the March 1988 passage of the Civil Rights Restoration Act, OCR's complaint load has increased dramatically. The 3,382 complaints received in FY 1990 represent a 71 percent increase over the number received in FY 1987, the last full fiscal year before passage of the Act. Complaint receipts now exceed any previous level in the agency's history. As a result, for the past three years complaint investigations have consumed virtually all of OCR's resources.

This fiscal year is no different. Between October 1, 1990 and April 30, 1991, OCR received 2,008 complaints, which is an 8 percent increase over the number of receipts during the same period in FY 1990. As in previous years, the majority of these complaints allege discrimination on the basis of handicap and have been filed by individual complainants. Nevertheless, in spite of this tremendous work load, we have been able to meet over 90 percent of OCR's case processing time frames.

OCR continues to be one of the few Federal civil rights enforcement agencies where an individual can expect, and will get, a prompt resolution of his or her complaint. We are providing all of the resources necessary to ensure that level of achievement continues. The effective, efficient, and timely resolution of complaints of discrimination remains OCR's highest priority.

NATIONAL ENFORCEMENT STRATEGY

To become a more effective and visible agency, OCR must establish clear priorities, develop and disseminate policy on critical civil rights issues, and strengthen its compliance, enforcement, and technical assistance activities. In addition to meeting its complaint processing responsibilities, OCR must focus on many important issues that do not usually arise through complaints and initiate investigations of broader impact than are found in most complaint allegations.

Therefore, on December 11, 1990, I issued a National Enforcement Strategy, covering Fiscal Years 1991 and 1992, that describes OCR's goals for a balanced enforcement program to supplement, and complement, OCR's complaint investigation program. Key aspects of the enforcement strategy include:

- integrating OCR's compliance program into a comprehensive and well-coordinated program of policy development, staff training, compliance reviews, technical assistance, and policy dissemination;
- giving a very high priority to monitoring corrective action plans; and
- restructuring OCR to more effectively accomplish its mission.

PRIORITY ISSUES

The following high priority issues will receive special emphasis during FY 1991.

1. **Equal Educational Opportunities for National Origin Minority and Native American Students Who Are Limited-English Proficient (LEP)**

   OCR is developing a policy update and model investigative plan on this issue. A draft of that plan has been completed and is being shared for comment with several offices within the Department and with the Department of Justice. In addition to investigating

complaints on this issue, we are conducting several compliance reviews and on-site monitoring reviews during FY 1991 to examine whether recipients' practices with respect to LEP students are in compliance with Title VI of the Civil Rights Act of 1964. We also have initiated several technical assistance outreach activities to advise recipients of their obligations with regard to these students and to inform protected groups of their rights. For example, later this month OCR staff will be participating in a workshop at the annual conference of the National Association of Asian and Pacific Educators.

2. **Ability Grouping That Results in Segregation on the Basis of Race and National Origin**

OCR is preparing investigative procedures guidance and a model investigative plan on this issue. In addition to undergoing internal review by selected components within the Department, the draft of these policy documents was provided for review and comment to 17 organizations that we believe would be interested in this issue. Those comments will be considered before the final policy is issued. Investigations pursuant to complaints are being conducted on this issue, as well as compliance reviews, on-site monitoring, and technical assistance outreach activities.

3. **Racial Harassment in Educational Institutions**

OCR is developing policy standards for investigation of racial harassment incidents on campus and is working closely with educators to tackle this problem. For example, earlier this month OCR co-sponsored with Chicago State University and the University of Minnesota a workshop to address incidents of racial harassment on college campuses. At the elementary and secondary level, last month OCR delivered a workshop on "Defusing Racial Tensions" to the annual convention of the National School Boards Association. OCR continues to conduct complaint investigations on this issue, and I have named a senior attorney and a senior investigator from headquarters to serve as a rapid response team to supplement the investigatory resources of the regions.

4. **Responsibilities of School Systems to Provide Equal Educational Opportunities to Pregnant Students**

On October 15, 1990, I issued a letter to the Chief State School Officers outlining school districts' obligations to provide equal educational opportunities to pregnant students under Title IX of the Education Amendments of 1972. We are preparing a model investigative plan for use by the regional offices, which are conducting a number of compliance reviews on this issue during FY 1991. OCR is also conducting technical assistance outreach activities on this issue, such as participating in a Kids at Risk Conference with the Louisiana State Department of Education.

5. **Appropriate Identification for Special Education and Related Services for Certain Student Populations, e.g., Drug-Exposed and Homeless Children With Handicaps**

On October 15, 1990, I issued another letter to the Chief State School Officers, this one detailing school districts' responsibilities under Section 504 of the Rehabilitation Act of 1973 toward handicapped children who are homeless or who were born to mothers addicted to drugs. In addition to advising school districts of their obligations through technical assistance outreach activities with, for example, the California Council for School Administrators of Special Education, OCR is conducting compliance review activity on this issue during FY 1991.

6. **Discrimination on the Basis of Sex in Athletics Programs**

Using a Title IX Athletics Manual issued by OCR last year, we are conducting a number of complaint investigations and compliance reviews on this issue in FY 1991. OCR also is initiating technical assistance outreach on this issue through such activities as participation in the annual meeting of the California Commission on the Status of Women.

7. **Discrimination on the Basis of Race in Admissions Programs and in the Provision of Financial Assistance to Undergraduate and Graduate Students**

In addition to investigating complaints on this issue, OCR is conducting compliance reviews on the issue of discrimination on the basis of race in admissions, most of which are Asian admissions reviews. Last fall, OCR

issued Letters of Findings in the Harvard and UCLA graduate program Asian admissions compliance reviews. The reviews of the UCLA undergraduate program and at the University of California at Berkeley are continuing.[1]

During FY 1991, OCR also will give priority to developing and disseminating policy statements on two other issues of national importance, Educational Choice and Attention Deficit Attention Disorder (ADD). Because of the variety and scope of Educational Choice plans across the nation, OCR policy on this issue will be set forth on a case-by-case basis tailored to the specific plan under review. We are preparing a guidance memorandum for the regional offices on the application of Section 504 to students with ADD, which will be issued shortly. To ensure wide dissemination of the policy to interested parties, we are working with a national organization, Children with Attention Disorder, which has indicated a strong interest in publicizing the policy in its monthly newsletter and biannual magazine. A senior attorney from OCR headquarters has made a number of presentations to state and local officials on this policy, and OCR is working with the Department's Office of Special Education and Rehabilitation Services to communicate OCR's policy and its relationship to Section 504 and the Individuals with Disabilities Education Act.

For FY 1992, the following high priority issues have been identified.

1. **Over-Inclusion of Minority Students in Special Education Classes**

2. **Sexual Harassment of Students**

3. **Student Transfer and School Assignment Practices That Result in the Illegal Resegregation of Minority Students**

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[1] Regarding the issue of race-exclusive scholarships, on March 20, 1991, Secretary of Education Lamar Alexander announced a four step process that the Department will follow to develop guidance for colleges and universities about student scholarship and loan programs in which a student's race or national origin is a factor. OCR is firmly committed to the Secretary's action and is actively working on the review process.

4. **Discrimination on the Basis of Age in the Admission of Students to Graduate and Professional Schools**

5. **Discrimination on the Basis of Race and National Origin in Student Discipline**

6. **Equal Opportunity for Minorities and Women to Participate in Math and Science Courses**

OCR is in the process of developing policy guidance for each of these issues. In addition, at the end of the first year after implementation of the National Enforcement Strategy, we will assess our efforts in order to determine whether some of the FY 1991 issues should be carried over into FY 1992.

COMPLIANCE REVIEWS

In previous years, OCR conducted a decentralized compliance review program in which each regional office determined which recipients and which issues would be addressed. The focus was on conducting as many reviews as possible, and, as a result, the regions often conducted reviews of limited scope and with limited impact on beneficiaries. As our complaint work load increased over the past three years, OCR had to substantially reduce the number of compliance reviews it conducts; in FY 1990, we initiated 32 reviews.

I have changed the focus of OCR's compliance review program from an emphasis on overall numbers to an emphasis on impact. We will now use the limited resources available for compliance reviews to address high priority issues that are likely to have the broadest effect. Regional offices have been directed to select, for the most part, compliance review issues for this year from the list of FY 1991 issues identified in the National Enforcement Strategy, although reviews on other issues may be conducted.

OCR will conduct a modest number of compliance reviews this year. Appended to this document is a partial list of compliance reviews OCR is conducting this year, specifically, those reviews where OCR has already notified the recipient by data request or where OCR has already gone on-site. Most of those reviews will address the high priority issues identified in the National Enforcement Strategy. OCR's goals for this year's compliance review activity are to:

- focus on areas that are underrepresented in our complaint work load (i.e., while almost two-thirds of our complaint receipts address issues of discrimination

on the basis of handicap, more that 85 percent of our FY 1991 compliance reviews will focus on race, national origin, and sex discrimination issues);

- o address issues that have been identified by educators, civil rights groups, and the Congress as needing special attention; and

- o increase by approximately 25 percent the total number of reviews conducted this year over the number conducted last year.

POLICY DEPLOYMENT AND TECHNICAL ASSISTANCE OUTREACH

Consistent with the implementation activities outlined in the National Enforcement Strategy, OCR is meeting with a broad array of interested groups at the regional and headquarters level to provide substantive information about OCR's policies, legal standards, and procedures related to the high priority issues. We are participating in selected major conferences of national education and civil rights organizations where there are opportunities to discuss policy and enforcement initiatives, and we are meeting with state and local education officials, college and university presidents, state bar associations, and representatives from advocacy groups. The focus of these meetings is to prevent violations of the civil rights statutes by providing recipients with specific information about the law and OCR's policies and to inform protected group members of their civil rights. [See appended calendar that includes a partial listing of technical assistance outreach activities we have scheduled between now and the end of the fiscal year.]

We are developing technical assistance resource packages and presentation packages on each of the FY 1991 high priority issues for use by our regional offices. The resource packages assist regional staff in responding to technical assistance requests from recipients and beneficiaries and, where appropriate, making referrals to other agencies and organizations for additional information. The presentation packages are used to address conferences and workshops in which OCR participates.

In addition, we are working with educational institutions, nonprofit organizations, cable television networks, and independent producers to develop video materials on civil rights related topics. Also, in February I participated in a Black Issues in Higher Education panel discussion on "Rise in Campus Racism: Causes and Solutions." We are also hoping to develop public service announcements with Lifetime Cable Network on Title IX related issues affecting equal educational opportunities for girls and women in the areas of math, science, and athletics.

Other television projects are being worked on.

OCR uses technical assistance publications to further disseminate information about our program. We are in the process of reprinting most of our current publications because the stocks have been depleted for two or more years. [See appended list of publications being reprinted.] In addition, we have developed a number of new publications, many of which relate to the high priority issues identified in the National Enforcement Strategy, including:

* "The Provision of an Equal Educational Opportunity to Limited-English Proficient Students"
* "Preventing Racial Incidents on the College Campus: A National Challenge"
* "Teenage Pregnancy and Parenthood Issues Under Title IX of the Education Amendments of 1972"
* "What Schools Can Do to Improve Math and Science Achievement by Minority and Female Students"
* "Discipline of Handicapped Students in Elementary and Secondary Schools"
* "Vocational Education and Civil Rights"
* "Auxiliary Aids and Services for Postsecondary Students with Handicaps: Higher Education's Obligations Under Section 504"
* "Placement of School Children with Acquired Immune Deficiency Syndrome"
* "Magnet Schools: Promoting Equal Opportunity and Quality Education"
* "How to File a Discrimination Complaint"
* "Notice of Nondiscrimination"

OCR continues to respond to all requests for technical assistance. Also, in order to ensure the broadest possible dissemination of OCR policy, we have established a Policy Information Line telephone number where the public may call and request a copy of any OCR policy document. The telephone number is (202) 732-1547. We are working on installing two toll-free lines for this service.

MONITORING

In the past, concerns have been expressed about whether OCR has given sufficient priority to monitoring corrective action agreements obtained from recipients pursuant to a violation finding. Therefore, as part of our National Enforcement Strategy, I have designated the monitoring of corrective action plans a mandatory activity for all regional office personnel, with the same priority as complaint investigations. The performance agreements of OCR's Regional Directors have been modified to reflect the high priority accorded to monitoring activities.

In May 1990, OCR issued a Revised Investigation Procedures Manual that outlines for the regions specific standards on the requirements of an acceptable corrective action plan. These plans must contain clear commitments on the part of the recipient, with sufficient specificity so that OCR knows exactly what, when, and where corrective actions will be initiated and completed. Also, as a part of our Quality Review Program, we are continuing to look at this issue to determine whether further guidance to the regions is needed.

With respect to higher education desegregation plan monitoring, I share the Administration's concerns regarding the Court of Appeals for the Fifth Circuit's en banc finding that Mississippi has dismantled satisfactorily its formerly de jure segregated system of higher education "by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures." The Fifth Circuit's decision in the case now styled United States v. Mabus was inconsistent with OCR's long-standing practice of looking beyond race-neutral admissions policies to determine whether an institution has taken significant measures designed to overcome the effects of prior discrimination. The Solicitor General sought certiorari from the Fifth Circuit's decision in Mabus, which was granted by the Supreme Court on April 15, 1991.

OCR's ongoing review of the efforts made by former de jure segregated higher education systems to implement their desegregation plans will continue. A Notice of Availability regarding the draft Final Report for Texas has been published in the Federal Register seeking public comment. Secretary Alexander has stated that he will confer with DOJ before deciding whether the compliance determinations concerning certain state systems of higher education, including Kentucky, Pennsylvania, Texas and Maryland, should be held in abeyance pending the Supreme Court's action in Mabus.

ENFORCEMENT ACTIVITIES

This Administration has demonstrated its commitment to the full and aggressive enforcement of civil rights laws by terminating all Federal funding to the DeKalb County School District, Georgia's largest school system, for failure to allow OCR to investigate alleged violations of the rights of handicapped Students. After the termination order became effective on September 14, 1990, OCR continued to pursue settlement efforts with the school district. As a result of these efforts, on April 5, 1991, the school district and OCR reached an agreement in which DeKalb promised to give OCR full access to information necessary to investigate pending and future complaints. OCR forwarded a data request to DeKalb regarding eight pending complaints to which the district responded satisfactorily. As a result, DeKalb's eligibility for funding was reinstated on April 17, 1991.

QUALITY REVIEW PROGRAM

On July 11, 1990, I advised the Regional Directors that OCR was replacing its former Quality Assurance program with a new Quality Review Program, which includes regional substantive reviews, regional procedural reviews, an Assistant Secretary's Quality Review Team, and Steps for Safeguarding the Integrity of Regional Records. I have also convened a Quality Review Team led by regional and headquarters managers who have in-depth knowledge of regional case investigation procedures, civil rights law, regulations, and policies. For FY 1991, the Review Team will focus on several areas of high priority, including:

* Is OCR's practice of accepting pre-LOF corrective action plans resulting in high quality, legally sufficient remedies to the violations cited?

* Are OCR's regional offices appropriately monitoring corrective action plans and following up with recipients who have not fulfilled their commitments?

* Have revisions to OCR's Investigation Procedures Manual, particularly those related to administrative closures, resulted in better case-processing efficiency?

* In FY 1990, OCR modified its case-processing procedures to allow regional offices additional flexibility to investigate cases and obtain corrective action within the existing internal time frames. Are any additional revisions to the time frames needed?

- What is the overall quality of regional case processing?

The Review Team will thoroughly review each of these issues and develop findings and recommendations. Three of these regional reviews have already been conducted; two additional regions will be reviewed this year, and the remaining five regions will be reviewed in FY 1992.

STAFF TRAINING

In January of this year, a week of intensive training on the FY 1991 high priority issues was provided to OCR regional Division Directors and Chief Civil Rights Attorneys. During this workshop, staff had the opportunity to discuss and become familiar with draft and final policy documents, investigative techniques, and data analysis for these issues. Attendees trained their colleagues on the information discussed in the workshop when they returned to their respective regional offices. Our next session, which will be held this fall, will focus on assessing the effectiveness of the training provided in January and the guidance provided to the regions during the first year implementation of the National Enforcement Strategy.

I fully recognize the need to do a great deal more in this area. In March, I met with all of the OCR Regional Directors and headquarters Senior Staff in Washington to further discuss the National Enforcement Strategy. We arranged to have outside speakers provide an overview on several issues in the Strategy, including an Associate from the Child Welfare Division of the Children's Defense Fund to discuss civil rights issues related to homeless children, the Director of the Educational Foundation of the American Association of University Women to discuss equal educational opportunities for pregnant students, and the Associate Director of the National Center for Family Centered Care to discuss civil rights issues related to children born to addicted mothers. We also discussed related management issues. Of particular concern was the ability of the agency to provide staff training. Based on the recommendations made at that meeting, my staff is currently developing additional proposals for meeting our program, management, and technical training needs. We are conducting basic investigation training for new investigators in June and, as part of my proposed reorganization of OCR headquarters, the training function will be integrated with the policy development function to ensure close coordination and consistent quality in our training efforts.

This year we are devoting substantially increased resources for training purposes. For example, in FY 1990 OCR spent $1,235 on training other than that provided by the Department's Horace Mann Learning Center (HMLC). In FY 1991, we are spending $167,000 on training other than that provided by HMLC, and in FY 1992, we will be spending $255,000. In addition, we have requested a significant increase in our travel budget for FY 1992, part of which will be used to pay the travel costs for staff visiting the regions to provide policy training.

SURVEYS

Due to budget constraints exacerbated by OCR's complaint work load, provision of the 1988 Elementary and Secondary (E&S) School Civil Rights Survey data was delayed. I have made the provision of this data a priority, and 1988 reported data at the district and national levels is now available.

The 1990 E&S Survey forms were mailed in December, and completed forms were returned by the 3,500 school districts that were surveyed on approximately February 28, 1991. We anticipate completing our final analysis of the 1990 survey data by April 1992.

With respect to the 1992 E&S Survey, I have established a task force to determine what changes are needed in the data collection. Based on the task force's review, we developed a proposal to restructure the survey to address the following new issues: teen pregnancy; ability grouping; magnet schools; advanced placement in math, science, and computer science courses; and interscholastic athletics. This proposal has been discussed with representatives of the nation's Chief State School Officers. We also are conducting a feasibility study, co-sponsored by the National Center for Education Statistics, to determine the availability of data on homeless children with disabilities and other issues.

BUDGET

When I assumed the position of Assistant Secretary, OCR had insufficient funds and staff to address its continually mounting work load. Well before the beginning of the fiscal year in October, it became apparent that the FY 1991 budget, which was subject to an across-the-board cut and a requirement to absorb the government-wide pay raise, would be inadequate to resolve the long-standing problems faced by the agency. Furthermore, the budget impasse last fall compounded OCR's problems by forcing a virtual halt to all travel, thus creating a temporary backlog of investigations while the details of the budget compromise were being worked out.

BEST COPY AVAILABLE

Working within OCR's FY 1991 budget appropriation, I have taken a number of steps to improve the agency's management of funds, including:

- cutting back lower priority activities, such as use of centralized computer services;
- obtaining approval to buy, at a lower cost, computer equipment that is better suited to OCR's needs than the equipment specified in the Department's contract;
- eliminating duplicative equipment maintenance contracts; and
- reducing OCR's contribution for survey data obtained from the National Center for Education Statistics.

We anticipate spending $800,000 this year to purchase much needed computer equipment, which will bring OCR to a ratio of one computer for every two staff. In addition, we are conducting a study of OCR travel expenditures by the regional offices to identify cost-saving measures that can be implemented nationwide.

We worked hard to develop an FY 1992 budget that will address many of the long-standing problems faced by OCR. With the full support of the Department and the Office of Management and Budget, the Administration has submitted to the Congress an FY 1992 budget request for OCR of $56,000,000, which is more than $7.5 million higher than our FY 1991 appropriation, and a request for 35 additional staff.

The increased budget will be used for:

- compensation and benefits for the additional staff;
- travel for conducting complaint investigations and compliance reviews, ensuring that corrective action plans are fully monitored, and providing program training to our staff by OCR legal and policy experts;
- expanding technical assistance outreach efforts;
- training by outside providers;
- computer equipment; and
- printing of OCR's technical assistance publications.

REORGANIZATION

OCR headquarters is operating within an organizational structure that, except for a few modifications over the years, was designed in 1983. Although OCR is fundamentally a law enforcement agency, I determined upon my arrival that insufficient resources had been devoted to the performance of critical legal, policy, and enforcement activities. Given the significant and unabated increase in complaint receipts, we needed to look for ways to relieve the workload burden on the regions.

In order to address these problems, I identified a number of structural problems in OCR headquarters and took steps to correct them. These steps included the elimination of areas of duplication and overlap; expansion of some existing functions; provision for additional functions not currently being performed; and reduction or expansion of the size of some components to reflect changing work loads. In addition, the organizational location of some functions needed to be realigned to increase effectiveness.

We have developed a revised organizational structure for OCR headquarters that we expect to substantially improve our headquarters operations. We have worked closely with Departmental staff responsible for reorganization activities in designing the new structure and related tasks, such as writing position descriptions. I am now working with my managers, the Union, and selected staff to design an appropriate implementation plan.

The restructured headquarters organization will provide for more effective staff utilization, reduction of some work load burdens on the regions, greater responsiveness to regional needs, and a more positive work environment for employees. Refocusing technical expertise along functional lines also will enhance performance, productivity, and coordination.

OTHER MANAGEMENT INITIATIVES

It is my hope that the proposed reorganization will have the effect of increasing staff resources available for compliance and enforcement activities in the regional offices. Pending approval and implementation of the reorganization, I have taken steps to temporarily reassign certain activities from the regions to headquarters, such as the civil rights review of Magnet Schools Assistance Program funding applications. I have carefully monitored the complaint load in each regional office and transferred the responsibility for handling some complaints between regions in order to better balance the staff to work load

ratios among the regional offices. Staff ceilings in those regions with the greatest work loads have been raised, in some cases substantially, and we are pursuing a number of avenues to reduce the time it takes to hire new staff.

In the past, compliance review and technical assistance activities were planned by the regional offices with little national focus and, often, limited scope. This year, the approach has been national, rather than regional, and emphasizes the careful, coordinated allocation of staff resources in support of the priorities identified in the National Enforcement Strategy.

We also have designed a study to look into possible differences in complaint processing efficiency among the regional offices. It is focused on determining how OCR can modify its procedures and practices to ensure that investigators and managers can ably do their jobs with a minimal number of impediments.

MEETINGS WITH OUTSIDE GROUPS

Consistent with my commitment to this Committee at the time of my confirmation, I have made it a point to seek the advice and counsel of civil rights advocacy groups. Within my first two months in office, I met with representatives from the Mexican American Legal Defense and Education Fund, Latino Issues Forum, Public Advocates, Inc., National Association of Bilingual Education, National Coalition for Girls and Women in Education, NAACP Legal Defense Fund, Association for Retarded Citizens, and the Learning Disability Association. More recently, I have met with representatives from the Urban League, American Association of University Women's Educational Foundation, Indian American Forum for Political Education, Children's Defense Fund, and National Center for Family-Centered Care. I have met with state and local education officials, college and university officials, and representatives from national education associations. I plan to continue holding such meetings.

CONCLUSION

The Office for Civil Rights is first, and foremost, a law enforcement agency charged with protecting fundamental rights to equal educational opportunity. These rights are conferred in statutes that require the Federal government to ensure that public funds do not support discrimination. Underlying these legal requirements is the pivotal role of education in our nation. Education is not only the vehicle that Americans have traditionally used to achieve their expectations and dreams for a better life, it is the cornerstone of equal opportunity.

Effective civil rights enforcement can help all persons make the most of their individual capacities and talents.

There is a compelling national interest in eliminating discrimination in our educational institutions. If present trends continue, 68 percent of workers entering the labor force between now and the year 2000 will be minorities and women. OCR will play a vital role in ensuring that all students are prepared for the new high technology and managerial jobs that American business will create in coming years. To that end, I will continue to work cooperatively with the thousands of administrators, school officials, and others, such as the Congress, who guide the American educational process. Such efforts are critical to establishing the groundwork for achievement of equal educational opportunity and quality education for all our people.

FY 1991 COMPLIANCE REVIEWS
WHERE DATA REQUEST HAS BEEN SENT AND/OR ON-SITE INITIATED
(as of May 15, 1991)

TITLE VI LAU

Lawrence, Massachusetts
Edison, New Jersey
District of Columbia Schools
Charleston, South Carolina
Jefferson Parish, Louisiana
Liberal, Kansas
Morrill, Nebraska
San Juan, Utah

TITLE VI ABILITY GROUPING

Mecklenberg, North Carolina
Duplin County, North Carolina
Selma, Alabama
Commerce City, Colorado
Huerfano S.D. RE #1, Colorado

TITLE IX EEO FOR PREGNANT STUDENTS

Atlanta, Georgia
Granite S.D. #1, Illinois
Lawrence, Kansas
St. Joseph, Missouri

TITLE IX ATHLETICS

West Carolina University
Iowa State University
University of Wyoming
Oregon State University

SECTION 504 LOCATION AND IDENTIFICATION

Des Moines, Iowa

OTHER REVIEWS

Tuskegee Institute (Section 504)
University of North Carolina - Greensboro (Title VI and Age)
Youngstown, Ohio (Title VI Discipline)

OCR NATIONAL ENFORCEMENT STRATEGY CALENDAR PRIORITY ISSUES CALENDAR
TECHNICAL ASSISTANCE OUTREACH ACTIVITIES -- APRIL - SEPTEMBER 1991

APRIL 1991

DATE	ACTIVITY	ISSUES	LOCATION
4/1	Conference on Multicultural Education, Sponsor: Western Illinois University	Limited-English Proficiency	Springfield, IL
4/4	Federal Executive Board's Black Federal Employees Council	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	Kansas City, MO
4/11	Illinois Department of Mental Health State Conference(northern Illinois)	Location and Identification of Homeless Children (and other Section 504 issues)	Chicago, IL
4/18	Illinois Department of Mental Health State Conference (central Illinois)	Location and Identification of Homeless Children (and other Section 504 issues)	Chicago, IL
4/19	Region IX Sponsored Workshop for College and University Officials	Racial Harassment	San Francisco, CA
4/19-20	Bilingual Multicultural Education Program: Ohio Department of Education and Cleveland Public Schools	Limited-English Proficiency	Cleveland, OH
4/27	State Conference of Ohio Teachers of English to Speakers of Other Languages	Limited-English Proficiency	Columbus, OH

MAY 1991

DATE	ACTIVITY	ISSUES	LOCATION
5/1	Conference of the National Association of Asian and Pacific Educators	Limited-English Proficiency	(need site)
5/2	Kids at Risk Conference - Louisiana State Department of Education	Location and Identification of Homeless Children; EEO for Pregnant Students	Baton Rouge, LA.
5/2	Equity Conference for State and Local Civil Rights Coordinators and Advisors	Racial Harassment; Limited-English Proficiency; EEO for Pregnant Students	Pine Bluff, AK
5/2-3	OCR Regional Conference on Racial Harassment, Co-sponsors: Chicago State University and University of Minnesota	Racial Harassment	Chicago, IL
5/9	Meeting of Chief State School Officers for Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	All National Enforcement Strategy Issues	Dallas, TX
5/9-10	California Council for School Administrators of Special Education	Location and Identification of Homeless Children; Attention Deficit Hyperactivity Disorder; Differences Between Section 504 and IDEA	Indian Wells, CA

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5/10	School Law Committee of the Missouri Bar Association	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	(need site)
5/10-12	Magnet School Program Conference	Ability Grouping	Palm Beach, FL
5/15	OCR Workshop on Ability Grouping	Ability Grouping	Chicago, IL
5/17	Missouri Association of School Administrators Conference	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	(need site)
5/22	Nebraska Urban League	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	(need site)
5/23	Chief Executive Officers of the Southern Conference Presidents' Council	Title IX Athletics	Myrtle Beach, SC
5/31	Oregon Statewide Conference for Higher Education Minority Faculty	Racial Harassment	Carvalais, OR
5/91 (tentative)	Workshops with School Districts in the Sikeston, Missouri area	Racial Harassment	Sikeston, MO
5/91 (need exact date)	OCR Region III Workshop with University of Delaware Officials	Racial Harassment	Wilmington, DE

5/91	Meetings with Individual School Districts in New York that have Title VI\Lau Plans with OCR	Limited-English Proficiency	State of NY
5/91	Meetings with Individual School Districts in New Jersey that have Title VI\Lau Plans with OCR	Limited-English Proficiency	State of NJ

JUNE 1991

DATE	ACTIVITY	ISSUES	LOCATION
6/13-14	Meeting with School Superintendents Implementing OCR Title VI\Lau Plans	Limited-English Proficiency; Location and Identification for Homeless Students	Tampa, FL
6/17	Oklahoma Multi-Cultural Advisory Conference	Racial Harassment; Limited-English Proficiency; EEO for Pregnant Students	Oklahoma City, OK
6/17	Policy Meetings for the New York City Board of Education and 16 of the 32 Community School District Administrators	Location and Identification of Homeless Students	New York, NY
6/18	Oklahoma Statewide Civil Rights Conference	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	Oklahoma City, OK

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6/18	Arkansas Statewide Equity Conference	Limited-English Proficiency; Racial Harassment; EEO for Pregnant Students	Conway, AK
6/19-20	Annual School Law Seminar, sponsor : Kansas Association of School Board Attorneys	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	(need site)
6/91 (need exact date)	San Francisco State University Workshop	Location and Identification; Attention Deficit Hyperactivity Disorder; Differences Between Section 504 and the IDEA	San Francisco, CA

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July 1991

DATE	ACTIVITY	ISSUES	LOCATION
7/14-17	Georgia Association of Educational Leaders	Ability Grouping	Jekyl Island, GA
7/19	Region IX Conference for College and University Officials	Racial Harassment	San Francisco, CA
7/91	Conference at the Training Center for Superintendents (tentative)	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	Austin, TX

August 1991

DATE	ACTIVITY	ISSUES	LOCATION
8/91 (need exact date)	University of California at Berkely Workshop	Location and Identification of Homeless Students; Attention Deficit Hyperactivity Disorder; Differences Between Section 504 and the IDEA	Berkely, CA
8/91 (need exact date)	Seminar at the Interface Desegregation Assistance Center Institute '91 - Participants from Five States, Guam and the Trust Territories	Limited-English Proficiency	Portland, OR

September 1991

DATE	ACTIVITY	ISSUES	LOCATION
9/26/91	Racial Harassment Workshop, OCR, University of Colorado and Colleges and Universities in the Denver Area	Racial Harassment	Denver, CO
9/91	Texas Association of School Administrators and Texas Association of School Boards Conference (tentative)	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	Austin, TX
9/91	Desegregation Assistance Center Annual Conference	Limited-English Proficiency; EEO for Pregnant Students; Racial Harassment	San Antonio, TX

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9/91 (tentative)	Higher Education Coordinating Board Members and State Board of Regents Representatives for Arkansas, Louisiana, New Mexico, Oklahoma and Texas	Racial Harassment; Title VI Admissions	Dallas, TX
9/91	Missouri Bar Association	Limited-English Proficiency; Ability Grouping; Racial Harassment; EEO for Pregnant Students; Location and Identification; Title IX Athletics	(need site)
9/91(need exact date)	Seminar at the Interface Desegregation Assistance Center Institute '91 - Participants from Five States, Guam and the Trust Territories	Limited-English Proficiency	Portland, OR
9/91 (need exact date)	Workshop with Penn State University	Racial Harassment	Harrisburg, PA
9/91 (need exact date)	Middle States Association Annual Meeting	Racial Harassment	Philadelphia, PA
9/91 (need exact date)	Georgia Education Law Review Conference	Ability Grouping	(need site)
9/91 (need exact date)	Conduct Policy Workshops for Officials of Several SUNY Campuses in Upstate New York	Racial Harassment	State of NY

OCR PUBLICATIONS BEING REPRINTED IN FY 1991

"Education and Title VI"

"Guidance Counselor's Role in Ensuring Educational Opportunity"

"Student Assignment in Elementary and Secondary Education and Title VI"

"Student Assignment in Elementary and Secondary Education and Title IX"

"Student Assignment in Elementary and Secondary Education and Section 504"

"Equal Opportunity in Intercollegiate Athletics"

"Civil Rights of Students With Hidden Disabilities"

"Title IX and Sex Discrimination"

"Intercollegiate Athletics Policy Interpretation"

"Sexual Harassment: It's Not Academic"

"The Rights of Individuals With Handicaps"

"Nondiscrimination in Employment Practices in Education"

"Free Appropriate Public Education for Students With Handicaps"

"OCR Fact Sheet"

Senator SIMON. You talked about compliance reviews. If we could just go through these priorities that you have established. Limited English proficient students—how many compliance reviews have you had 1991, 1992 in that area?

Mr. WILLIAMS. In 1991, we have initiated eight as of this date, and we——

Senator SIMON. Nineteen-ninety-two?

Mr. WILLIAMS. Nineteen-ninety-two, we have not scheduled those.

Senator SIMON. OK.

Mr. WILLIAMS. We have not scheduled any compliance reviews for fiscal year 1992.

Senator SIMON. We are not talking about fiscal year 1992 now, we are talking about this calendar year.

Mr. WILLIAMS. This calendar year, we have scheduled 12 compliance reviews with regards to LEP. We have initiated as of this date eight.

Senator SIMON. Ability grouping?

Mr. WILLIAMS. Ability grouping, we have scheduled to do eight. We have initiated as of this date four—five, I am sorry, five.

Senator SIMON. Racial harassment?

Mr. WILLIAMS. We have initiated one, and that is the only one that is scheduled for this year.

Senator SIMON. Now I am confused, I confess. The earlier chart, if you can put that back up, that shows compliance reviews, only shows one started so far in the first 5 months, or 4½ months.

Mr. WILLIAMS. I think, Senator, that is a reflection of as of when the information was sent to you prior to the original setting of this hearing of on-sites that we had conducted by the date that that information was sent.

Senator SIMON. You are suggesting that since you were scheduled for that first hearing, there all of the sudden has been a big jump——

Mr. WILLIAMS. No, there are two things——

Senator SIMON [continuing]. In compliance reviews?

Mr. WILLIAMS. If I can go back in terms of the process of compliance reviews. The process of compliance reviews is, number one, to send out a data request to the school districts requesting information from—first of all, advising them that a compliance review will be conducted at their institution, and second of all requesting the necessary data that would assist the investigators carrying out the investigation.

What you have is an indication of on-site visits as of the time that information was previously sent to you. It does not include information that would reflect how many data requests had been sent to institutions.

Senator SIMON. All right, but as you look at that—and presumably data requests have been going on all along—as you look at that, does that disturb you, when you look at compliance reviews there, at that record?

Mr. WILLIAMS. That would disturb me if that is where the story would end. But sir, we have a fiscal year that will end the last day of September. We will anticipate exceeding 32, which was the number of compliance reviews done last year, at least by eight this year.

That just simply reflects—all of the points on your chart reflect the ending number of compliance reviews conducted in each of those given years, except in 1991 it reflects the beginning number. It does not reflect the ending number.

Senator SIMON. OK. So what you are telling me is that you are going to get that chart moving in the other direction again?

Mr. WILLIAMS. What I am telling you is that number will end at approximately 40 for the year 1991.

Senator SIMON. OK. How long is it going to be until we get back up to where we were say in 1983?

Mr. WILLIAMS. I am really not in a position to answer that. I can tell you some of the variables. If we look at those years, we will also see that at that time, OCR was functioning with, on some occasions greater staff, but more importantly, much less complaints.

We are now functioning in this year—last year we had 3,382 complaints, compared to 1987, where we were 1,000 complaints less with the same number of people.

Senator SIMON. You have how many employees right now?

Mr. WILLIAMS. We have a FT authorized level of 820. We have approximately 790-some odd people on staff at this point.

Senator SIMON. OK.

Mr. WILLIAMS. We have authorizations out to the regional directors to hire about 65 additional people now, and will be sending out additional authorizations.

Senator SIMON. What I am hearing from people is that you have some good people out there at the grassroots level working for you who are waiting for a strong signal from on top.

Mr. WILLIAMS. Well Senator, first of all I will agree with you. We have some excellent people out there in the field that work for the Office of Civil Rights. I would also say that they have received that strong signal.

We said, when we announced the national enforcement strategy on December 11, 1990, we encouraged them to tell us how many, with your resources, how many compliance reviews can you do? The number that I am telling you now, 40, is reflective of the common knowledge of each of those ten regional directors telling us that, given their resources, how many compliance reviews they think they can do.

Senator SIMON. How many employees did your office have at the high point?

Mr. WILLIAMS. Which year, sir?

Senator SIMON. Well, let us take 1985, where you had about 300 compliance reviews. Does anyone on your staff know?

Mr. WILLIAMS. In 1987, we had an authorized FT level of 840, but it is also important to know that we had approximately 1,400 less complaints.

Senator SIMON. But your responsibility is not simply to look at complaints.

Mr. WILLIAMS. I would agree with that.

Senator SIMON. So a drop from 820 or whatever down to 790, in numbers of employees, even with the additional complaints, suggests to me that we need a little more aggressive leadership.

Mr. WILLIAMS. I think I would put it a different way, Senator. I would suggest that what we need to do is try to identify ways to

enhance the number of compliance reviews that we conduct. That, I would agree with. We are looking at ways to do that.

But the vast increase in complaint is not something that we should pass aside, because the first responsibility of that agency is to investigate its complaint load. One of the first sort of tears at the confidence of the public in the office would be if they were to file what they believe to be legitimate complaints of discrimination and have the office not be about the business of investigating those complaints.

So while we do have a very real responsibility to initiate compliance reviews on our own, I would still say that our first responsibility is to attempt in some kind of way to resolve the complaints that are filed by individual Americans that are saying that I have indeed been discriminated against, and they expect that complaint to be resolved.

Senator SIMON. When you say the first priority is complaints, is that your judgement, is that the statute, where do you get that?

Mr. WILLIAMS. The statute says that we must investigate complaints promptly. It gives us no authority to do anything other than that. And, as many people that are familiar with OCR remember, we were sued back in the 1970's for not having done just that, for not having investigated complaints.

Senator SIMON. But the statute also requires you to move when you, for example in this area of groupings, you know right now that there are schools—it has been reported to your office there are schools that have an excess percentage of minorities in some of these below-average groupings in schools.

Now, you say you don't have the time to do compliance reviews yet. Have you even sent letters to these schools saying we are concerned?

Mr. WILLIAMS. Sent letters to——

Senator SIMON. Let us just say that the Tom Smith Grade School—the evidence is a disproportionate number of minorities are being placed into classes that are regarded as less-able classes, however you want to do that. How do you handle that right now? What is happening?

Mr. WILLIAMS. At this point, we are conducting compliance reviews. As I said, we are scheduled to do eight this year. We have started at this point five. The whole notion of the national enforcement strategy is by doing some, and by publicizing those, that we can, at least number one, advise the public and educators what their responsibilities are, advise parents and children about what their rights are, and maybe by doing that we will be in a position to correct some of these problems.

There are 110,000 school districts in America, many of whom use ability-grouping practices, and I dare say that we will have a very difficult time getting to each and every one of those 110,000 schools.

Senator SIMON. I understand that, but you have, as I understand it, several hundred letters on several hundred schools where they have excessive groupings of minorities in these classes that are, whatever you want to call the classes.

Mr. WILLIAMS. I am not familiar with the letters you are talking about.

Senator SIMON. OK. It is data from your own surveys that you have. And if you have that from several hundred schools and you are going to do eight compliance reviews, my question is are you at least going to send a letter to the other schools saying we are concerned, we are doing some compliance reviews elsewhere about excessive minority groupings in these classes?

Mr. WILLIAMS. I would consider that. Without having had the opportunity to think about the pros and cons of that, I do not feel real comfortable saying at this point and committing at this point that I would send a letter to each of those school districts.

Senator SIMON. OK, you get back to me on that, will you?

Mr. WILLIAMS. That would be fine.

Senator SIMON. All right. Let me talk about something you may feel more comfortable talking about because you have done a lot of talking about it. That is minority scholarships.

Washington University in St. Louis has a little brochure saying they provide scholarships for graduate students who are minorities in the field of science and math. Are they violating the law?

Mr. WILLIAMS. I don't know yet. I don't have enough facts. The determination back in December depends on a wide range of variables, and based upon the information I have at this point, I don't know.

I don't know, number one, the legal basis that Washington University is using to provide those scholarships. I don't know the source of dollars. I don't know the impact upon third persons. I don't know enough about that scholarship to make that determination.

Senator SIMON. Can you give me the name of a single member of the House or Senate who at any point in the debate on trying to move ahead in this field ever thought that the Office of Civil Rights would be used to stop scholarships to minorities?

Mr. WILLIAMS. Senator, I cannot give you the name of any member of the House or the Senate. I can suggest to you that some members of both the House and the Senate have suggested to us of their concern about discrimination in the area of admissions. And I think it is fundamentally similar, discrimination in admissions that may deny an individual the opportunity to enter a school, and the discrimination that denies them of the wherewithal to go.

So no, I cannot give you the name of any Senator or Congressman that suggested that we ought to be in the business of looking at scholarships. Nor can I suggest to you any member of the House or the Senate that said we should look at the situation that involves drug-exposed children. But there is a responsibility that we have to look to see when there may be a problem out there.

Senator SIMON. Well, on drug-exposed children, I can give you a few speeches of my own. I don't think you are probably that eager to read my speeches here, but there has been plenty of interest.

But congressional intent I think clearly was violated by your statement in the press conference, and we have not solved yet the damage that was caused by that.

Let me ask in terms of just process. Do you feel that you should announce a policy statement that is that sweeping, that has shaken up colleges and universities all over this country, that potentially

has done a great deal of damage—should that kind of a policy statement just come from a press conference?

Mr. WILLIAMS. As I have said on a number of occasions, a policy statement should not be of the consequence of a press release or a press conference, but that was not the issuance of a policy statement. That was the provision of technical assistance to the directors of the Fiesta Bowl that indeed contained within it our legal interpretation of the law.

Senator SIMON. Now I have here, and I will put in the record, it says—this is from your office—policy documents, reverse chronological order. And one of these policy documents here, it says letter to Fiesta Bowl.

[The documents from the Office for Civil Rights follow:]

Index of Documents In
OCR Policy Codification System
(as of April 3, 1991)

Provided by the
Office for Civil Rights,
U.S. Department of Education

in response to a request by the
Committee on Labor and Human Resources,
U.S. Senate

(Cover sheet prepared by the Committee,
based on information supplied by OCR)

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 04/01/91
To :
From :
Subject : FREEMAN V. DEPT OF ED (SUPREME COURT): MEMORANDUM IN OPPOSITION FOR STAY PENDING REVIEW IN THE ELEVENTH CIRCUIT
Document: 00251

Date : 03/06/91
To : SS
From : AS
Subject : PROGRAM ACCESSIBILITY PROVISIONS OF THE SECTION 504 REGULATION AND IMPLEMENTATION OF THE UNIFORM ACCESSIBILITY STANDARDS
Document: 00249

Date : 01/28/91
To : SS
From : DASP
Subject : CHANGES MADE BY THE AMERICANS WITH DISABILITIES ACT TO THE DEFINITION OF HANDICAPPED PERSON UNDER THE REHABILITATION ACT
Document: 00242

Date : 01/01/91
To :
From :
Subject : FREEMAN V. CAVAZOS (11TH CIRCUIT): DEECISION REGARDING REQUEST FOR STAY OF AGENCY ACTION
Document: 00250

Date : 12/04/90
To : JOHN JUNKER, EXEC. DIR. OF FIESTA BOWL
From : AS
Subject : LETTER TO FIESTA BOWL OFFICIALS ON A PROPOSED MARTIN LUTHER KING SCHOLARSHIP PROGRAM
Document: 00243

Date : 11/13/90
To : LEGAL COUNSEL, VERMONT DEPT OF ED
From : OASP
Subject : LETTER (VERMONT PRIVATE SCHOOLS AND DISCIPLINE)
Document: 00244

Date : 10/29/90
To : RD IV
From : AS
Subject : CONRERENCE CALL ON RACE-SPECIFIC SCHOLARSHIPS PROVIDED BY FLORIDA ATLANTIC UNIVERSITY
Document: 00246

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Date : 10/29/90
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Subject : OREGON STATE BOARD OF HIGHER EDUCATION, NO.10902015 - POLICY REVIEW
Document: 00245

Date : 10/16/90
To :
From :
Subject : MEMORANDUM FOR RESPONDENTS IN OPPOSITION TO PETITIONERS' EMERGENCY MOTIONS FOR STAY AND WTIR OF MANDAMUS IN FREEMAN V. CAVAZOS, CIVIL ACTION NO. 90-8904
Document: 00240

Date : 10/15/90
To : CHIEF STATE SCHOOL OFFICER
From : AS
Subject : FORM LETTER FROM AS TO CHIEF STATE SCHOOL OFFICERS CONCERNING CHILDREN OF HOMELESS FAMILIES AND CHILDREN OF MOTHERS ADDICTED TO DRUGS IN RELATION TO SECTION 504 REQUIREMENTS
Document: 00234

Date : 10/15/90
To : CHIEF STATE SCHOOL OFFICER
From : AS
Subject : FORM LETTER FROM AS TO CHIEF STATE SCHOOL OFFICER EXPLAINING REQUIREMENTS OF TITLE IX AS THEY RELATE TO PREGNENT STUDENTS
Document: 00233

Date : 10/05/90
To :
From :
Subject : MEMORANDUM DECISION: FREEMAN V. CAVAZOS, CIVIL ACTIONS NOS. 90-2175-LFO AND 90-2387-LFO
Document: 00238

Date : 09/21/90
To : GOVERNOR OF WISCONSIN (THOMPSON)
From : AS - OSERS AND AS - OCR
Subject : LETTER CONCERNING MILWAUKEE (WI) CHOICE PROGRAM
Document: 00247

Date : 09/20/90
To :
From :
Subject : MEMORANDUM DECISION: FREEMAN V. CAVAZOS; CIVIL ACTION NO. 90-2175-LFO
Document: 00232

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Date : 09/17/90
To : ADMINISTRATIVE LAW JUDGE
From : AS
Subject : POST TRIAL BRIEF AND PROPOSED ORDER SUBMITTED BY THE AS FOR CIVIL RIGHTS: IN THE MATTER OF CAPISTRANO UNIFIED SCHOOL DISTRICT
Document: 00239

Date : 07/27/90
To : SUPERINTENDENT OF SCHOOLS, MILWAUKEE, WISCONSIN
From : UNDER SECRETARY
Subject : LETTER FROM UNDER SECRETARY TO SUPERINTENDENT OF MILWAUKEE SCHOOLS FORWARDING OCR ANALYSIS OF MILWAUKEE PARENTAL CHOICE PROGRAM
Document: 00231

Date : 06/05/90
To : SS
From : DASP
Subject : ARMED SERVICES VOCATIONAL APTITUDE BATTERY (ASVAB)
Document: 00229

Date : 05/30/90
To :
From : ADMINISTRATIVE LAW JUDGE (ALJ)
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Subject : DECISION OF THE SECRETARY: IN THE MATTER OF SCHOOL DISTRICT OF RIVER ROUGE, MICHIGAN
Document: 00236

Date : 05/22/90
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From :
Subject : DECISION OF THE SECRETARY: IN THE MATTER OF MAYWOOD SCHOOL DISTRICT #89 AND ILLINOIS STATE BOARD OF EDUCATION
Document: 00235

Date : 05/09/90
To : SS
From : AS
Subject : UNIV OF PA V. EEOC, ---U.S.---, 110 S. CT. 5576 (1990).
Document: 00228

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From : AS
Subject : GUIDANCE ON THE APPLICATION OF SECTION 504 TO CHILDREN WITH AIDS IN ELEMENTARY AND SECONDARY SCHOOLS
Document: 00223

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To : PRESIDENTS OF INSTITUTIONS
From : AS
Subject : SECTION 504 AND APPRENTICESHIP PROGRAMS
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To : COMM OF ED (LUTJEHARMS)
From : AS
Subject : LETTER REGARDING NE CHOICE LEGISLATION
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Date : 02/09/90
To : DAVID S. TATEL AND MAGREE SNEED
From : AS AND AS FOR OSERS
Subject : LETTER ON CONSISTENCY OF INTERDISTRICT CHOICE
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Date : 01/24/90
To : RDI-X
From : AS
Subject : MODIFICATION ON THE OFFICE FOR CIVIL RIGHTS (OCR) CASE PROCESSING TIME FRAMES
Document: 00225

Date : 01/05/90
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From : AS
Subject : INVESTATIVE PLAN FOR UNDERGRADUATE ADMISSIONS COMPLIANCE REVIEWS
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Date : 01/03/90
To : SS
From : AS
Subject : GUIDANCE ON THE APPLICATION OF SECTION 504 TO NONEDUCATIONAL PROGRAMS OF RECIPIENT OF FEDERAL FINANCIAL ASSISTANCE
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Date : 12/20/89
To : OCR SS
From : AS
Subject : HEARING-IMPAIRED PARENTS AS "QUALIFIED PERSONS" UNDER SECTION 504
Document: 00205

Date : 12/06/89
To : RD X
From : AS
Subject : REQUEST FOR POLICY GUIDANCE - SEATTLE SCHOOL DISTRICT, OCR CASE NO. 10-85-1063
Document: 00230

Date : 11/27/89
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Subject : THE ASSISTANT SECRETARY'S RESPONSE TO RESPONDENTS' PRE HEARING BRIEFS
Document: 00217

Date : 11/13/89
To : SS
From : AS
Subject : SUSPENSION OF HANDICAPPED STUDENTS --DECIDING WHETHER MISBEHAVIOR IS CAUSED BY A CHILD'S HANDICAPPING CONDITION
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Subject : THE ASSISTANT SECRETARY'S PREHERING BRIEF
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Date : 10/11/89
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From : AS
Subject : TITLE IX RELIGIOUS EXEMPTION PROCEDURES AND INSTRUCTIONS FOR INVESTIGATING COMPLAINTS AT INSTITUTIONS WITH RELIGIOUS EXEMPTIONS
Document: 00213

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From : AS
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Subject : SECTION 504 AND STUDENT HEALTH INSURANCE PLAN (SHIP) ISSUES - POLICY GUIDANCE
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Date : 06/26/89
To : RDX
From : AS
Subject : REQUEST FOR POLICY GUIDANCE - VANCOUVER S.D., OCR CASE NO. 10-86-1008
Document: 00170

Date : 06/23/89
To : RDI-X
From : AS
Subject : TITLE VI ISSUES RAISED BY STUDENT HEALTH INSURANCE PLANS (SHIPS) FOR FOREIGN STUDENTS
Document: 00177

Date : 06/14/89
To : SS
From : AS
Subject : POLICY INTERPRETATION ON WHETHER OBESITY IS A HANDICAPPING CONDITION UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C. SECTION 794; 34 C.F.R. PART 104
Document: 00176

Date : 05/31/89
To : OCR SS
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Subject : SOCIAL FRATERNITIES AND SORORITIES AND TITLE IX EXEMPTIONS
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From :
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Date : 05/09/89
To : MS. LAWSON, ATLANTA AREA TECHNICAL SCHOOL
From : DIRECTOR, POLICY AND ENFORCEMENT SERVICE
Subject : WHETHER A PREADMISSION QUESTION IS PERMISSIBLE UNDER SECTION 504
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Date : 04/11/89
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Subject : EEOC POLICY GUIDANCE ON SEXUAL HARASSMENT
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Subject : REQUEST FOR ASSISTANCE. MUSCOGEE COUNTY S.D. GA
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From : AS
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Subject : LETTER TO DR. PAULETTE J. THOMAS
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Date : 02/06/89
To : RDI-X
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Subject : VOCATIONAL EDUCATION-METHODS OF ADMINISTRATION POLICY ISSUES
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Date : 11/03/88
To : MR. THOMAS G. ERON
From : AS
Subject : COMPLIANCE WITH TITLE IX IN PROVISION OF ATHLETIC FINANCIAL ASSISTANCE
Document: 00132

Date : 11/03/88
To : PROFESSOR, UNIVERSITY OF KANSAS
From : AS
Subject : LETTER TO GARY M. CLARK, ED. D., NATIONAL STUDY OF HIGH SCHOOL PROGRAMS FOR HANDICAPPED YOUTH
Document: 00165

Date : 10/28/88
To : A SINGLE COMPLAINANT
From : AS
Subject : SECTION 504 AND TITLE VI ALLEGATIONS OF DISCRIMINATION IN STUDENT HEALTH INSURANCE PLANS
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To : GEORGE HADDAD
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To : CONGRESSMAN TRENT LOTT
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Subject : LETTER TO CONGRESSMAN TRENT LOTT, EXPLAINING APPLICATION OF TITLE IX REGS. TO S.H.I.P.S FOR FOREIGN STUDENTS
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Date : 09/30/88
To : FRED C. WEEKS, VP, GUARANTEED TRUST LIFE INSUR. CO.
From : AS
Subject : LETTER TO FRED C. WEEKS, VICE-PRESIDENT, GUARANTEED TRUST LIFE INSURANCE CO.
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Date : 09/30/88
To : STEPHEN L. BECKLEY, ACCOUNT EXECUTIVE
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Subject : LETTER TO STEPHEN L. BECKLEY, ACCOUNT EXECUTIVE
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To : MR. DAN NEWMAN
From : AS
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From :
Subject : IN THE MATTER OF MISSOURI STATE DEPT OF ELEMENTARY AND SECONDARY EDUCATION
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To : OCR
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To : SS
From : DASP
Subject : MEMORANDUM OF UNDERSTANDING(MOU) BETWEEN THE OFFICE FOR CIVIL RIGHTS(OCR) AND THE OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES(OSERS):COMPLAINT HANDLING PROCEDURES
Document: 00153

Date : 10/26/87
To : SS
From : DASP
Subject : PRE-LOF NEGOTIATIONS STATUS REPORT
Document: 00140

Date : 10/14/87
To : SS
From : DASP
Subject : DETERMINING WHETHER A COMPLAINANT IS HANDICAPPED
Document: 00161

Date : 08/21/87
To : RDIV
From : AS
Subject : JURISDICTION TO INVESTIGATE OCR CASE NO. 04-87-1135, WOODWARD ACADEMY, FULTON COUNTY, GEORGIA
Document: 00159

Date : 07/29/87
To : SS
From : AS
Subject : MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE OFFICE FOR CIVIL RIGHTS(OCR) AND THE OFFICE OF SPECIAL EDUCATION AND REHEBILITATIVE SERVICES(OSERS)
Document: 00152

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 07/17/87
To : RDIV
From : AS
Subject : ART INSTITUTE OF ATLANTA, OCR CASE NO. 04-85-2077 - PROPOSED ENFORCEMENT PROCEEDINGS
Document: 00106

Date : 07/14/87
To : RDI-X
From : AS
Subject : REVISED GUIDANCE FOR THE SELECTION OF SITES FOR COMPLIANCE REVIEW
Document: 00123

Date : 07/13/87
To : RDI-X
From : AS
Subject : REPORTING ADAMS DATES
Document: 00052

Date : 07/13/87
To : RDI - X
From : AS
Subject : COMPLIANCE REVIEWS OF INSTITUTIONS THAT MAY USE ADMISSION QUOTAS FOR ASIAN-AMERICAN STUDENTS
Document: 00071

Date : 07/13/87
To : RDI - X
From : AS
Subject : APPLICABILITY OF THE REVISED COMPLAINANT APPEAL PROCESS
Document: 00082

Date : 06/24/87
To : RDI-X
From : AS
Subject : NOTIFICATION TO ADAMS PLAINTIFFS OF COMPLIANCE
Document: 00059

Date : 06/17/87
To : RDI-X
From : AS
Subject : POLICY GUIDANCE ON ASSURANCES OF CONFIDENTIALITY
Document: 00066

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 06/17/87
To : RDI-X
From : AS
Subject : PROCEDURES REGIONAL OFFICES SHOULD FOLLOW IN MONITORING PREVIOUSLY ACCEPTED CORRECTIVE ACTION PLANS
Document: 00041

Date : 06/15/87
To : RDI-X
From : AS
Subject : ADAMS TIME FRAMES - TOLLING PROVISIONS
Document: 00046

Date : 05/28/87
To : RDI-X
From : AS
Subject : POLICY GUIDANCE ON THE USE OF THE WORD "ENFORCEMENT" IN THE INVESTIGATIONS PROCEDURES MANUAL
Document: 00067

Date : 05/01/87
To : RDI - X
From : AS
Subject : TYPES OF COMPLAINTS TO BE CONSIDERED "SYSTEMIC" FOR PURPOSE OF REGULATIONS GOVERNING REFERRAL OF EMPLOYMENT DISCRIMINATION COMPLAINTS TO EEOC
Document: 00103

Date : 04/30/87
To : RDI-X
From : AS
Subject : POLICY GUIDANCE ON THE EXTENT TO WHICH OCR NEEDS TO ESTABLISH JURISDICTION IN COURT-ORDERED CASES
Document: 00068

Date : 04/27/87
To : SS
From : AS
Subject : INVESTIGATION START DATE FOR PURPOSES OF FULFILLING THE ADAMS ORDER REQUIREMENTS
Document: 00048

Date : 04/17/87
To :
From :
Subject : IN THE MATTER OF DILLON COUNTY SCHOOL DISTRICT NO. 1, S.C. AND SOUTH CAROLINA STATE DEPT OF ED
Document: 00180

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 03/25/87
To : RDI-X
From : AS
Subject : ADAMS TIME FRAMES - TOLLING PROVISIONS
Document: 00047

Date : 03/20/87
To : SS
From : AS
Subject : IMPLEMENTATION OF REVISED COMPLAINANT APPEAL PROCESS
Document: 00085

Date : 03/04/87
To : ALL OCR STAFF
From : AS
Subject : SIGNING OF DOCUMENTS
Document: 00181

Date : 02/27/87
To : SS
From : AS
Subject : REVISED COMPLAINANT APPEAL PROCESS
Document: 00102

Date : 02/26/87
To : RD - I-X
From : AS
Subject : INVESTIGATIVE PLAN FOR TITLE VI LAU REVIEWS
Document: 00026

Date : 02/24/87
To : RDVII
From : AS
Subject : DANIELS V. BOARD OF EDUCATION - DISPARATE TREATMENT AND DISPARATE IMPACT THEORIES OF PROOF
Document: 00099

Date : 02/12/87
To : RDI - X
From : AS
Subject : REPORTS OF RACIAL INCIDENTS ON COLLEGE CAMPUSES
Document: 00067

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 01/13/87
To : RDIII
From : AS
Subject : JURISDICTION OVER PENNSYLVANIA INTERMEDIATE UNITS, LOCAL SCHOOL DISTRICTS, AND THE PENNSYLVANIA DEPARTMENT OF EDUCATION
Document: 00032

Date : 12/15/86
To : RDI-X
From : AS
Subject : FUNDING ELIGIBILITY OF LOCAL EDUCATIONAL AGENCIES (LEA) FOR MAGNET SCHOOLS ASSISTANCE PROGRAM (MSAP) AWARDS - 1987
Document: 00054

Date : 12/04/86
To : RDI - X
From : AS
Subject : ATASCADERO STATE HOSPITAL V. SCANLON AND THE REHABILITATION ACT AMENDMENTS OF 1986.
Document: 00084

Date : 11/17/86
To : RDVII
From : AS
Subject : REQUEST REGARDING JURISDICTION TO INVESTIGATE STUDENT HEALTH INSURANCE CASE, OCR CASE NO. 07-86-2043
Document: 00113

Date : 10/22/86
To : RDV
From : AS
Subject : RESPONSE TO QUESTIONS, LAW SCHOOL ADMISSIONS, DEPAUL UNIV. COLLEGE OF LAW, CASE NO.05-84-6001, I.I.T./CHICAGO/KENT COLLEGE OF LAW, CASE NO. 05-85-6008
Document: 00070

Date : 09/23/86
To :
From :
Subject : IN THE MATTER OF MOLINE UNIT SCHOOL DISTRICT #40, IL AND ILLINOIS STATE BD OF ED
Document: 00182

Date : 08/21/86
To :
From : ALJ
Subject : IN THE MATTER OF LAUDERDALE COUNTY, ALABAMA AND THE ALABAMA STATE DEPT OF EDUCATION "RULINGS ON EXCEPTIONS AND ORDER OF REMAND"
Document: 00176

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 08/14/86
To : RD - I-X
From : AS
Subject : STANDARD LANGUAGE FOR OCR CORRESPONDENCE REGARDING JURISDICTION
Document: 00016

Date : 07/25/86
To :
From :
Subject : DILLON COUNTY SCHOOL DISTRICT NO.1, LAKE VIEW, S.C. AND SOUTH CAROLINA DEPT OF ED
Document: 00183

Date : 06/06/86
To : GENERAL COUNSEL
From : AS
Subject : OCR POLICY WITH REGARD TO INTERDISTRICT TRANSFERS OF HANDICAPPED STUDENTS AND TRANSFER OF INDIVIDUALIZED EDUCATION PLANS
Document: 00056

Date : 05/13/86
To : RDI - X
From : AS
Subject : GUIDANCE ON THE APPLICATION OF SECTION 504 REGULATIONS RELATED TO ACADEMIC ADJUSTMENTS IN POSTSECONDARY EDUCATION INSTITUTIONS
Document: 00091

Date : 05/07/86
To : RDI-X
From : AS
Subject : REFERRAL OF EMPLOYMENT RETALIATION COMPLAINTS TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) UNDER EEOC REFERRAL REGULATIONS
Document: 00065

Date : 04/29/86
To : RDI - X
From : AS
Subject : STUDENT HEALTH INSURANCE COMPLAINTS ALLEGING AGE DISCRIMINATION
Document: 00073

Date : 04/02/86
To : RDI-X
From : AS
Subject : GUIDANCE ON JURISDICTION OVER ALLEGATIONS CONCERNING GRIEVANCE PROCEDURES
Document: 00138

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 04/01/86
To : RDIX
From : AS
Subject : POLICY GUIDANCE ON SAN LEANDRO UNIFIED S.D.M. OCR CASE NO. 09-85-1056 - SECTION 504, HANDICAPPED PARENTS
Document: 00114

Date : 03/07/86
To : RDI-X
From : AS
Subject : POLICY GUIDANCE REGARDING CALIFORNIA BASIC EDUCATIONAL SKILLS TEST (CBEST) - CALIFORNIA STATE DEPARTMENT OF EDUCATION, OCR NO. 09-84-4008
Document: 00055

Date : 03/03/86
To : RDIX
From : AS
Subject : POLICY GUIDANCE, OCR CASE NO. 09-83-2070, STANFORD UNIV. GRADUATE SCHOOL OF BUSINESS
Document: 00098

Date : 02/18/86
To : RDIV
From : AS
Subject : POLICY GUIDANCE REQUEST FOR OAKWOOD COLLEGE, ALABAMA, OCR COMPLAINT NO. 04-85-2078
Document: 00107

Date : 01/14/86
To : RDI-X
From : AS
Subject : APPLICATION OF THE ADMISSIONS EXCEPTION IN SITE SELECTIONS FOR PROGRAM ACCESSIBILITY COMPLIANCE REVIEWS
Document: 00108

Date : 12/30/85
To : RD - I-X
From : AS
Subject : FURTHER GUIDANCE ON SCOPE OF JURISDICTION IN LIGHT OF THE REVIEWING AUTHORITY DECISION IN THE PICKENS COUNTY CASE
Document: 00014

Date : 12/13/85
To : RDVII
From : AS
Subject : REQUEST FOR POLICY GUIDANCE, OCR CASE NO.07-85-1094, MISSOURI DEPT. OF ELEMENTARY AND SECONDARY EDUCATION AND CASE NOS. 07-85-1070 THROUGH 07-85-1093, SPECIAL SCHOOL
Document: 00025

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 12/03/85
To : RDI-X
From : AS
Subject : GUIDANCE FOR HANDLING REFERRALS OF SUBRECIPIENTS BY STATE METHODS OF ADMINISTRATION AGENCIES
Document: 00156

Date : 12/03/85
To : RD - I-X
From : AS
Subject : ATTACHEMENT TO MODEL LETTER TO SCHOOL DISTRICTS WITH APPROVED LAU PLANS: OCR's TITLE VI LANGUAGE MINORITY COMPLIANCE PROCEDURES
Document: 00027

Date : 11/27/85
To : RD - IV
From : AS
Subject : REQUEST FOR TECHNICAL ASSISTANCE ON POLK COUNTY (FLORIDA) SCHOOL DISTRICT
Document: 00030

Date : 11/22/85
To : RDI-X
From : AS
Subject : GUIDANCE ON THE APPLICATION OF GROVE CITY COLLEGE V. BELL TO OCR ENFORCEMENT ACTIVITIES IN POSTSECONDARY INSTITUTIONS
Document: 00105

Date : 11/22/85
To : RDI-X
From : AS
Subject : GUIDANCE ON "ADMISSIONS EXCEPTION"
Document: 00143

Date : 11/22/85
To : RDI - X
From : AS
Subject : JURISDICTION TO INVESTIGATE COMPLAINTS INVOLVING STUDENT HEALTH INSURANCE
Document: 00100

Date : 11/19/85
To :
From :
Subject : IN THE MATTER OF MOLINE UNIT SCHOOL DISTRICT #40
Document: 00184

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 11/18/85
To : RDVII
From : AS
Subject : REQUEST FOR GUIDANCE ON SOUTHWEST BAPTIST UNIV, CASE NO. 07-85-2027, ET AL. [10 COLLEGES]-- STUDENT HEALTH INSURANCE
Document: 00112

Date : 10/28/85
To :
From :
Subject : IN THE MATTER OF PICKENS COUNTY SCHOOL DISTRICT, EASLEY, SC AND SOUTH CAROLINA DEPT OF ED
Document: 00185

Date : 10/25/85
To : RDIV
From : AS
Subject : RESPONSE TO REQUEST FOR CLARIFICATION OF AUGUST 30, 1985 MEMORANDUM
Document: 00186

Date : 10/22/85
To : EXECUTIVE DIRECTOR ALETHIA HOUSE, INC.
From : AS
Subject : WHETHER ALCOHOLISM AND DRUG ADDICTION ARE CONSIDERED TO BE HANDICAPPING CONDITIONS UNDER SECTION 504
Document: 00015

Date : 10/02/85
To : RDIV
From : AS
Subject : REQUEST FOR POLICY CLARIFICATION - APPROPRIATE EDUCATION OF HANDICAPPED STUDENTS
Document: 00049

Date : 09/25/85
To : RDI - X
From : AS
Subject : THE SECTION 106.21(C)(4) PROHIBITION AGAINST PRE-ADMISSION MARITAL STATUS INQUIRIES
Document: 00088

Date : 09/09/85
To : RDVI
From : AS
Subject : POLICY GUIDANCE REQUEST, OCR CASE NO. 06-84-2027, TULSA JUNIOR COLLEGE - ACADEMIC ADJUSTMENTS
Document: 00075

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POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 09/03/85
To : RDV
From : AS
Subject : AUTHORITY TO ADMINISTRATIVELY CLOSE CASE NO. 05-85-2014, WISCONSIN DEPT OF HEALTH AND SOCIAL SERVICES, SECTION 504 EMPLOYMENT
Document: 00076

Date : 08/30/85
To : RDIII, IV, VI, VII
From : AS
Subject : MONITORING ACTIVITIES IN STATES IMPLEMENTING HIGHER ED DE-SEGREGATION PLANS SCHEDULED TO EXPIRE DURING THE 1985-86 ACADEMIC YEAR
Document: 00187

Date : 08/13/85
To : RD-I-X
From : AS
Subject : REVISION OF METHODS OF ADMINISTRATION DOCUMENTS TO RESOLVE COMPLIANCE PROBLEMS
Document: 00004

Date : 08/06/85
To : RDIX
From : DASO
Subject : CALIFORNIA DEPT OF REHABILITATION, CASE NOS. 09-84-3004 AND 09-85-3001
Document: 00090

Date : 08/02/85
To : RDI-X
From : AS
Subject : TITLE IX RELIGIOUS EXEMPTIONS
Document: 00122

Date : 07/30/85
To : EXEC. SEC. GOVERNOR'S COMM ON EMPLOY OF HANDICAPPED
From : AS
Subject : NONE - LETTER TO MR. RONALD F. HANSON, AUGUSTA, MAINE
Document: 00080

Date : 07/29/85
To : RDI-X
From : AS
Subject : IMPACT ON OCR ACTIVITIES OF THE CARL D. PERKINS VOCATIONAL EDUCATION ACT AND IMPLEMENTING REGULATIONS
Document: 00001

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 07/23/85
To : RDVII
From : AS
Subject : REQUEST FOR POLICY GUIDANCE IN ____ V. SIOUX CITY COMMUNITY SCHOOL DISTRICT, OCR #07-85-1101
Document: 00044

Date : 07/22/85
To : RDVI
From : AS
Subject : REQUESTS FOR POLICY GUIDANCE: OKLAHOMA STATE DEPARTMENT OF VOCATIONAL AND TECHNICAL EDUCATION, OCR NO. 06841105
Document: 00002

Date : 06/28/85
To : SUPERINTENDENT, LAKE WASHINGTON SCHOOL DISTRICT NO. 414
From : RD - X
Subject : WHETHER STUDENT WITH ALCOHOL AND DRUG ADDICTION SHOULD HAVE BEEN EVALUATED AS A HANDICAPPED STUDENT
Document: 00011

Date : 06/25/85
To : RDIII
From : AS
Subject : UNIVERSITY OF MARYLAND AT BALTIMORE, OCR CASE NO.03-84-2038 POLICY DECISION
Document: 00072

Date : 06/18/85
To : RDVII
From : AS
Subject : GUIDANCE ON AUTHORITY TO INVESTIGATE OCR CASES: NO. 07-85-2005, SOUTHEAST MISSOURI STATE; 07-88-2008, KANSAS STATE UNIV; 07-85-2017, MISSOURI WESTERN STATE COLLEGE;AND
Document: 00144

Date : 06/12/85
To : RD-I-X
From : AS
Subject : TIME FRAMES FOR METHODS OF ADMINISTRATION (MOA) COMPLIANCE REVIEWS
Document: 00006

Date : 06/12/85
To :
From : ALJ
Subject : IN THE MATTER OF MAYWOOD SCHOOL DISTRICT #19 AND ILLINOIS OFFICE OF EDUCATION "RULINGS ON EXCEPTIONS OF THE REVIEWING AUTHORITY"
Document: 00188

Run Date 04/03/91
POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 06/12/85
To : RDI-X
From : AS
Subject : COLLECTIVE BARGAINING AGREEMENT PROVISIONS RESTRICTING PLACEMENT OF HANDICAPPED CHILDREN IN REGULAR CLASSES
Document: 00045

Date : 06/12/85
To : RD-I-X
From : AS
Subject : CONTINUATION OF THE METHODS OF ADMINISTRATION CYCLE FOR THE NEXT FIVE YEARS
Document: 00007

Date : 06/11/85
To :
From : ALJ
Subject : IN THE MATTER OF LAUDERDALE COUNTY SCHOOL DISTRICT AND ALABAMA STATE DEPT OF ED "EXCEPTION TO THE INITIAL DECISION OF THE ALJ SUBMITTED BY THE OCR,U.S. DEPT OF ED"
Document: 00189

Date : 05/31/85
To :
From :
Subject : IN THE MATTER OF MOLINE UNIT SCHOOL DISTRICT #40 IL AND ILLINOIS STATE BOARD OF ED
Document: 00190

Date : 05/24/85
To : RD - VII
From : AS
Subject : POLICY GUIDANCE - McKINLEY V. KANSAS STATE BOARD OF EDUCATION (07-85-1017)
Document: 00028

Date : 05/22/85
To : RDVI
From : AS
Subject : REQUEST FOR POLICY GUIDANCE: EVIDENTIARY STANDARD NECESSARY TP PROVE WHETHER A RECIPIENT'S STUDENT HEALTH POLICY CONSTITUTES AN IMPERMISSABLE PREADMISSION INQUIRY AS TO HANDICAP
Document: 00111

Date : 04/24/85
To : RDIX
From : AS
Subject : POLICY GUIDANCE, CALIFORNIA STATE UNIVERSITY SYSTEM, CASE NO. 09-84-2058
Document: 00081

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 04/23/85
To :
From : ALJ
Subject : IN THE MATTER OF LAUDERDALE COUNTY SCHOOL DISTRICT AND ALABAMA STATE DEPT OF ED - INITIAL DECISION
Document: 00191

Date : 04/18/85
To : RDIV
From : AS
Subject : AUTHORITY TO INVESTIGATE OCR CASE NO.04-85-2006 - UNIV. OF NORTH CAROLINA-WILMINGTON; SECTION 504 ACADEMIC ADJUSTMENTS
Document: 00142

Date : 04/04/85
To : RDIV
From : AS
Subject : REGION IV REQUEST FOR POLICY DETERMINATION OF THE EFFECT OF SMITH V. ROBINSON, 104 S.CT. 3457(1984), ON OCR'S SEC. 504 JURISDICTION.
Document: 00050

Date : 04/04/85
To : RDIX
From : AS
Subject : SAN FRANCISCO UNIFIED SCHOOL DISTRICT, OCR CASE #09-85-1013 -- POLICY REQUEST
Document: 00057

Date : 04/01/85
To : RDV
From : AS
Subject : POLICY GUIDANCE FOR DETERMINING TITLE IX JURISDICTION IN GOLDEN/SHADWELL V. ELGIN COMMUNITY COLLEGE, CASE NO. 05-84-2063
Document: 00110

Date : 03/18/85
To : RDIV
From : AS
Subject : POLICY GUIDANCE REGARDING COMPLAINT NO. 04-84-2054, LE VAN V. EASTERN KENTUCKY UNIV. (TITLE IX EMPLOYMENT AND RETALIATION)
Document: 00109

Date : 02/22/85
To : RDI-X
From : AS
Subject : REFERRAL TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) OR TITLE VI OR TITLE IX COMPLAINTS ALLEGING DISCRIMINATION IN EMPLOYMENT
Document: 00064

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 02/19/85
To : RDI-K
From : AS
Subject : POLICY GUIDANCE FOR RESOLVING RELIGIOUS EXEMPTION REQUESTS
Document: 00121

Date : 02/11/85
To : RD III,IV,VI,VII
From : AS
Subject : GUIDANCE FOR DRAFTING ANNUAL EDUCATION LETTERS AND STATUS REPORTS ON THE IMPLEMENTATION OF HIGHER ED DESEGREGATION PLANS
Document: 00192

Date : 01/17/85
To :
From :
Subject : IN THE MATTER OF PICKENS COUNTY SCHOOL DISTRICT, EASLEY, SC AND SOUTH CAROLINA DEPT OF ED
Document: 00193

Date : 12/24/84
To : SENATOR CHARLES MATHIAS
From : AS
Subject : DIFFICULTY ENCOUNTERED BY BIRACIAL CHILDREN IN COMPLETING PUBLIC SCHOOL FORMS THAT REQUEST RACIAL INFORMATION
Document: 00063

Date : 11/26/84
To : RDV
From : AS
Subject : SEPARATION OF SEXES ON SCHOOL BUSES
Document: 00060

Date : 11/01/84
To : RDIV
From : AS
Subject : GUIDANCE TO KENTUCKY INSTITUTIONS ON DEVELOPING ACCEPTABLE EMPLOYMENT PLANS
Document: 00194

Date : 10/17/84
To : SCHOLARSHIP CHAIRMAN, DEMOCRATIC WOMEN'S CLUB OF FLORIDA
From : AS
Subject : THE DEMOCRATIC WOMEN'S CLUB OF FLORIDA, INC.'S SCHOLARSHIP FOR WOMEN
Document: 00089

Run Date 04/03/91
POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 09/11/84
To : RD - VIII
From : AS
Subject : POLICY REGARDING TITLE VI LANGUAGE MINORITY INVESTIGATIONS
Document: 00029

Date : 09/06/84
To :
From :
Subject : IN THE MATTER OF CAMDEN COUNTY SCHOOLS, GA AND GEORGIA DEPT OF ED
Document: 00195

Date : 08/31/84
To : RDII
From : AS
Subject : RAMAPO CENTRAL SCHOOL DISTRICT, HILLBURN, NEW YORK, OCR CASE NO. 02-83-1038
Document: 00043

Date : 08/14/84
To : RDII
From : AS
Subject : NEW YORK INSTITUTE OF TECHNOLOGY (NYIT)
Document: 00076

Date : 08/01/84
To : RDIV
From : AS
Subject : POLICY CLARIFICATION REGARDING HARDSHIP TRANSFER POLICY EXTENSION FOR KNOXVILLE CITY SCHOOLS, TENNESSEE
Document: 00061

Date : 07/31/84
To : RD - I-X
From : AS
Subject : ANALYSIS OF THE DECISION IN GROVE CITY COLLEGE V. BELL AND INITIAL GUIDANCE ON ITS APPLICATION TO OCR ENFORCEMENT ACTIVITIES
Document: 00013

Date : 06/07/84
To : RDVI
From : AS
Subject : MEMORANDUM REGARDING PROCEDURES FOR INVESTIGATING COMPLAINTS ALLEGING GRADING DISCRIMINATION
Document: 00101

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 06/07/84
To : RD - I-X
From : AS
Subject : LETTERS REPORTING OCR's EVALUATION OF STATE AGENCY PERFORMANCE OF VOCATIONAL EDUCATION MOA RESPONSIBILITIES
Document: 00009

Date : 06/07/84
To : RD - I-X
From : AS
Subject : LETTERS REPORTING OCR'S EVALUATION OF STATE AGENCY PERFORMANCE OF VOCATIONAL EDUCATION MOA RESPONSIBILITIES
Document: 00010

Date : 05/08/84
To : RDVII
From : AS
Subject : OCR POLICY REGARDING THE PROMULGATION OF FINDINGS WHEN CIVIL RIGHTS VIOLATIONS OTHER THAN THOSE UNDER INVESTIGATION ARE DISCOVERED.
Document: 00062

Date : 04/30/84
To : RDII
From : AS
Subject : REQUEST FOR POLICY CLARIFICATION ON ACCESS RIGHTS OF NON-CUSTODIAL PARENT UNDER SECTION 504, EHA, AND FERPA
Document: 00037

Date : 04/27/84
To : RDII
From : AS
Subject : REQUEST FOR POLICY INTERPRETATION REGARDING THE PROGRAM ACCESSIBILITY STANDARD TO BE USED IN EVALUATING RECIPIENT FACILITIES (HUNTER COLLEGE OF THE CITY UNIVERSITY OF NEW
Document: 00092

Date : 04/13/84
To : RDI
From : AS
Subject : REQUEST FOR POLICY GUIDANCE: REQUIRED POST-ADMISSION, PRE-ENROLLMENT MEDICAL QUESTIONNAIRE (HORN V. MITCHELL COLLEGE DOCKET NO. 01-84-2008, TITLE IX AND SECTION 504)
Document: 00104

Date : 03/09/84
To : RDV
From : AS
Subject : SAINT JOHN'S UNIVERSITY (05-83-2038)
Document: 00119

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 02/29/84
To : RDVIII
From : AS
Subject : SPECIAL EDUCATION TEST VALIDITY AND RELIABILITY - DOCKET NO. 06-83-3001
Document: 00053

Date : 02/16/84
To : RDI - X
From : AS
Subject : ADDITIONAL INFORMATION REGARDING THE REFERRAL OF TITLE VI COMPLAINTS TO THE VETERANS ADMINISTRATION (VA).
Document: 00077

Date : 02/10/84
To : RDI-X
From : AS
Subject : GUIDANCE ON HANDLING SCHOOL DESEGREGATION CASES AFTER ACCEPTANCE OF THE CONSENT DECREE IN BAKERSFIELD, CALIFORNIA
Document: 00033

Date : 01/25/84
To : RD-I-X
From : AS
Subject : POLICY CLARIFICATION CONCERNING TIMEFRAMES FOR VOCATIONAL EDUCATION MOAs FOR STATE RECIPIENTS IN CALIFORNIA
Document: 00005

Date : 01/09/84
To : AS
From : PES
Subject : THE LEGAL STANDARDS TO BE APPLIED IN A TITLE VI SCHOOL ASSIGNMENT CASE
Document: 00023

Date : 01/09/84
To : RDIX
From : AS
Subject : POLICY GUIDANCE FOR TITLE IX EMPLOYMENT, UNIVERSITY OF CALIFORNIA, DOCKET NOS. 09-83-2091 AND 09-83-2060
Document: 00079

Date : 12/06/83
To : RDVIII
From : AS
Subject : REQUEST FOR POLICY CLARIFICATION - ARKANSAS BOARD OF COOPERATIVE EDUCATION SERVICES (BOCES), DOCKET NO.06-83-1029
Document: 00034

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 11/09/83
To : RDIV
From : AS
Subject : REQUEST FOR POLICY CLARIFICATION -- COMPLIANCE REVIEW. DILLON #1 S.D.,SC. DOCKET NO. 04-82-5016
Document: 00211

Date : 09/29/83
To : RD III,IV,VI,VII
From : AS
Subject : GUIDANCE FOR MONITORING THE IMPLEMENTATION OF STATEWIDE HIGHER ED DESEGREGATION PLANS
Document: 00197

Date : 09/15/83
To : RDI-X
From : AS
Subject : PROCEDURES FOR RENEWING AND REPORTING ON THE ANNUAL CIVIL RIGHTS COMPLIANCE REPORTS SUBMITTED BY STATE VOCATIONAL ED AGENCIES
Document: 00155

Date : 07/01/83
To : RD III,IV,VI,VII
From :
Subject : SAMPLE MEASURES FOR THE EMPLOYMENT COMPONENT OF STATEWIDE HIGHER ED DEGREGATION PLANS
Document: 00196

Date : 06/17/83
To : RDIV
From : AS
Subject : POLICY CLARIFICATION - TITLE IX COACHING COMPENSATION
Document: 00118

Date : 06/17/83
To : RDI-X
From : AS
Subject : RELIGIOUS DISCRIMINATION COMPLAINTS
Document: 00120

Date : 05/24/83
To : RDI-X
From : AS
Subject : EXTENDED SCHOOL YEAR/DAY FOR HANDICAPPED CHILDREN
Document: 00056

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 08/26/82
To : RDI - X
From : AS
Subject : CORRECTION OF THE DEC 1980 AGE DISCRIMINATION COMPLAINT HANDLING INSTRUCTIONS
Document: 00083

Date : 07/28/82
To :
From : FR
Subject : NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE
Document: 00024

Date : 07/02/82
To : RDI - X
From : AS
Subject : PRE-LOF SETTLEMENT PROCEDURES: VIOLATION-CORRECTED LOFS
Document: 00093

Date : 05/24/82
To : RDI-X
From : AS
Subject : PROCESSING OF COMPLAINTS CONTAINING ALLEGATIONS OF DISCRIMINATION THAT WOULD VIOLATE SUBPART E OF THE DEPARTMENT'S TITLE IX REGULATIONS
Document: 00051

Date : 04/16/82
To : RDI - X
From : PES
Subject : METHODOLOGY FOR ANALYZING ADMISSIONS PROGRAMS IN INSTITUTIONS OF HIGHER EDUCATION
Document: 00095

Date : 04/12/82
To : RDI,II,III,VII,VIII
From : LEPS
Subject : INSTRUCTIONS FOR CONDUCT OF PILOT COMPLIANCE REVIEWS OF STATE VOCATIONAL REHABILITATION AGENCIES
Document: 00131

Date : 03/26/82
To : RDI-X
From : DIRECTOR,LITIGATION ENFORCEMENT AND POLICY SERVICE
Subject : GUIDANCE FOR WRITING INTERCOLLEGIATE ATHLETICS LETTERS OF FINDINGS
Document: 00141

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 02/26/82
To : RDI - X
From : PES
Subject : TITLE IX AND TITLE VI GRADUATE AND PROFESSIONAL SCHOOL ADMISSIONS REVIEW - REVIEWING RECRUITMENT PROGRAMS
Document: 00069

Date : 02/05/82
To :
From : ALJ
Subject : IN THE MATTER OF MAYWOOD SCHOOL DISTRICT #89 AND ILLINOIS BOARD OF ED "INITIAL DECISION"
Document: 00198

Date : 12/03/81
To : RDI - X
From : DASP
Subject : OCR'S JURISDICTION TO ENFORCE THE AGE DISCRIMINATION ACT OF 1975, 42 U.S.C. 6101 ET REG. IN THE ABSENCE OF AGENCY SPECIFIC REGULATIONS
Document: 00074

Date : 09/18/81
To : SECRETARY OF EDUCATION
From : AS
Subject : CIVIL RIGHTS ASPECTS OF DISCIPLINE IN THE PUBLIC SCHOOLS
Document: 00035

Date : 09/04/81
To :
From :
Subject : IN THE MATTER OF CAMDEN COUNTY SCHOOLS, GA AND GEORGIA DEPT OF ED "INITIAL DECISION"
Document: 00199

Date : 08/31/81
To : RDI - X
From : PES
Subject : TITLE IX AND SEXUAL HARASSMENT COMPLAINTS
Document: 00086

Date : 06/26/81
To :
From :
Subject : IN THE MATTER OF SCHOOL DISTRICT OF THE CITY OF FERNDALE,MI AND STATE OF MICHIGAN DEPT OF ED
Document: 00200

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 04/01/81
To :
From :
Subject : OCR HANDBOOK FOR THE IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973
Document: 00158

Date : 03/05/81
To :
From :
Subject : IN THE MATTER OF PERRY COUNTY SCHOOL DISTRICT, NEW AUGUSTA, MS AND MISSISSIPPI STATE DEPT OF ED
Document: 00201

Date : 02/12/81
To :
From :
Subject : INTHE MATTER OF PERRY COUNTY SCHOOL DISTRICT, NEW AUGUSTA, MS AND MISSISSIPPI STATE DEPT OF ED
Document: 00202

Date : 12/30/80
To :
From : FR
Subject : NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE, AND ASSISTANCE TO STATES FOR EDUCATION OF HANDI-
Document: 00022

Date : 06/06/80
To :
From : FR
Subject : APPENDIX B- GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICE'S ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, HANDICAP IN VOCATIONAL EDUCATION PROGRAMS
Document: 00003

Date : 04/30/80
To :
From :
Subject : IN THE MATTER OF RAYMONDVILLE INDEPENDENT SCHOOL DISTRICT,TX
Document: 00203

Date : 12/11/79
To :
From :
Subject : TITLE IX OF THE EDUCATION AMENDMENTS OF 1972; A POLICY INTERPRETATION: TITLE IX AND INTERCOLLEGIATE ATHLETICS, FEDERAL REGISTER, VOL.44,NO.239 - TUESDAY, DEC.11,1979
Document: 00117

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 10/23/79
To :
From :
Subject : IN THE MATTER OF SCHOOL DISTRICT OF THE CITY OF FERNDALE,MI AND STATE OF MICHIGAN DEPT OF ED
Document: 00204

Date : 10/10/79
To :
From : FR
Subject : TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: POLICY INTERPRETATION NO. 1:VOLUNTARY AFFIRMATIVE ACTION:ADMISSION OF MINORITY STUDENTS TO INSTITUTION OF HIGHER ED. FEDERAL REGIS-
Document: 00017

Date : 07/01/79
To : CHIEF STATE SCHOOL OFFICERS, ET AL.
From : DIRECTOR, OCR
Subject : PROCEDURES FOR PREPARING THE METHODS OF ADMINISTRATION DESCRIBED IN THE VOCATIONAL EDUCATION GUIDELINES
Document: 00154

Date : 03/21/79
To :
From : FR
Subject : VOCATIONAL EDUCATION PROGRAM GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP
Document: 00008

Date : 12/11/78
To :
From :
Subject : TITLE IX OF THE EDUCATION AMENDMENTS OF 1972: A PROPOSED POLICY INTERPRETATION - TITLE IX AND INTERCOLLEGIATE ATHLETICS
Document: 00116

Date : 08/14/78
To :
From : -
Subject : NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS - POLICY INTERPRETATIONS
Document: 00115

Date : 05/01/78
To :
From : FR
Subject : NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS. POLICY DETERMINATIONS. 43 FED. REG. 18630, NO. 84 (MAY 1, 1967)
Document: 00042

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 02/15/78
To :
From : RED REG
Subject : REVISED CRITERIA SPECIFYING INGREDIENTS OF ACCEPTABLE PLANS TO DESEGREGATE STATE SYSTEMS OF HIGHER EDUCATION
Document: 00096

Date : 05/26/77
To : DIRECTOR, OCR, HEW
From : ASST. GENERAL COUNSEL, HEW
Subject : TITLE IX POLICIES - DISCUSSION OF TAYLOR V. FINCH AND APPOINTING PROVISIONS
Document: 00130

Date : 04/12/77
To : SEC. HEW
From : ATTORNEY GENERAL (AG)
Subject : WHETHER DRUG ADDICTS AND ALCOHOLICS ARE "HANDICAPPED INDIVIDUALS" WITHIN THE MEANING OF THE REHABILITATION ACT OF 1973, AS AMENDED 29 U.S.C. S 701
Document: 00012

Date : 11/11/75
To :
From : FR
Subject : OFFICE FOR CIVIL RIGHTS. DISCRIMINATION IN ATHLETIC PROGRAMS. MEMORANDUM
Document: 00036

Date : 06/18/71
To :
From : FR
Subject : OFFICE FOR CIVIL RIGHTS. NONDISCRIMINATION IN ELEMENTARY & SECONDARY SCHOOLS. SCHOOL STAFFING PRACTICES. FEDERAL REGISTER, VOL. 36, NO. 118, 11769 (JUNE 8, 1971)
Document: 00019

Date : 05/25/70
To : SCHL DISTS WITH MORE THAN 5% NATIONAL ORIG - MIN. GRP CHILD.
From : DIRECTOR, OCR
Subject : IDENTIFICATION OF DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF NATIONAL ORIGIN. 35 FED. REG. 11595 (1970)
Document: 00018

Date : 07/03/69
To :
From :
Subject : TEXT OF JOINT STATEMENT ON SCHOOL DESEGREGATION BY ROBERT H. FINCH, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, AND ATTORNEY GENERAL JOHN N. MITCHELL
Document: 00020

Run Date 04/03/91

POLICY DOCUMENTS REVERSE CHRONOLOGICAL ORDER

Date : 03/01/69
To : PRESIDENTS OF INSTITUTIONS
From : AS
Subject : MEMORANDUM TO PRESIDENTS OF INSTITUTIONS OF HIGHER EDUCATION PARTICIPATING IN FEDERAL ASSISTANCE PROGRAMS
Document: 00248

Date : 03/23/68
To :
From : FR
Subject : POLICIES ON ELEM & SEC SCHOOL COMPLIANCE WITH TITLE VI, OF THE CIVIL RIGHTS ACT OF 1964, FEDERAL REGISTER, VOL 33, NO. 58, 4955 (MARCH 23, 1968)
Document: 00021

Date : 12/01/66
To :
From :
Subject : REVISED STATEMENT OF POLICIES FOR SCHOOL DESEGREGATION PLANS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED FOR THE SCHOOL YEAR 1967-68
Document: 00036

Date : 04/02/66
To :
From : RED REG
Subject : TITLE 28 - JUDICIAL ADMINISTRATION, DOJ. GUIDELINES FOR ENFORCEMENT OF TITLE VI.
Document: 00094

Date : 03/01/66
To :
From :
Subject : REVISED STATEMENT OF POLICIES FOR SCHOOL DESEGREGATION PLANS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
Document: 00039

Date : 04/01/65
To :
From :
Subject : GENERAL STATEMENT OF POLICIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 RESPECTING DESEGREGATION OF ELEMENTARY AND SECONDARY SCHOOLS - HEW, OFFICE OF EDUCATION
Document: 00040

Senator SIMON. Is that an error in the part of your office?

Mr. WILLIAMS. In the policy codification system, Senator, there are any number of things that are in that system. But that does not mean that they are statements of policy.

Policy is—we have actual policy documents that interpret our rules and regulations. That letter was not the dissemination of policy. It was a statement of offer of technical assistance.

Senator SIMON. Well, I guess I don't understand the phrase "policy document." Then, what concerns me is you put out this policy document statement, and the statement by the Secretary that you are going to go back to the pre-press conference situation—that is not listed as a policy document by your office.

Mr. WILLIAMS. The Secretary's statement?

Senator SIMON. Yes.

Mr. WILLIAMS. It was not issued by our office.

Senator SIMON. Well, do you think that what the Secretary had to say had something to do with policy?

Mr. WILLIAMS. The Secretary said that he was going to go back to pre-December 4——

Senator SIMON. Right.

Mr. WILLIAMS [continuing]. And review the situation.

Senator SIMON. Right.

Mr. WILLIAMS. No. Policy would tell individuals what are their substantive rights. It would be our interpretation, what are your rights as they relate to the law?

Senator SIMON. Well, if I were just to try and find out what policy is and go by policy documents, then I would have to say the December 4 statement stands. There is nothing in your policy documents to indicate any kind of a reversal. Now, I know reading the newspapers that obviously has changed.

Also, your policy codification system says that these policy documents that are listed will be made, and I quote, "readily available to interested individuals and organizations." But when we asked for two documents, we were told that those documents are internal documents, and not available to the public.

Mr. WILLIAMS. I am not aware of which documents you requested.

Senator SIMON. We have a letter from you of April 19. Let me just enter that in the record and we will get that information to you.

[The letter of Mr. Williams follows:]

UNITED STATES DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS,
Washington, DC, April 19, 1991.

The Honorable PAUL SIMON,
United States Senate,
Washington, DC

DEAR SENATOR SIMON: This is in response to your letter dated April 15, 1991, in preparation for the April 25th oversight hearing of the Committee on Labor and Human Resources. Enclosed are items referenced in your letter. In addition, consistent with discussions with Mr. Shireman of your staff, examples of complaint and compliance review files will be provided early next week.

Two documents from the Office for Civil Rights' Policy Codification System, Nos. 00246 and 00245, are internal documents concerning complaints against colleges that are still open and under review. These documents reflect the agency's internal deliberations, the disclosure of which may compromise ongoing Office for Civil Rights investigations and internal policy development. One of these two documents

was mistakenly released In response to a FOIA request; It is the October 29, 1990 letter to Gary D. Jackson from Richard D. Komer entitled "Oregon State Board of Higher Education, No. 10902015-Policy Review."

The second document, a memorandum dated October 29, 1990, from me to Jesse High entitled "Conference Call on Race-Specific Scholarships Provided by Florida Atlantic University, is made available to members of the Committee and their staff for review in the exercise of the Committee's oversight responsibilities, in accordance with 5 U.S.C. 552(d). You should be aware that the complainant in this case has filed suit against the Department, and we are in litigation at this time. Accordingly, the Department does not authorize disclosure of this document or any portion of it.

I look forward to appearing before the Committee on April 25th.

Sincerely,

MICHAEL L. WILLIAMS
Assistant Secretary for Civil Rights

Senator SIMON. Clearly, there is some, to put it mildly, some inconsistency here.

Mr. WILLIAMS. If I could, Senator, policy documents are indeed readily available. We have provided as part of the national enforcement strategy a telephone number on which individuals can call for it, and we are providing for toll-free numbers for individuals to use in order to make requests for policy documents. And, we will be publishing major policy documents in the Federal Register.

Senator SIMON. My staff calls my attention to your statement today, your formal statement that is already entered in the record, in which you say the public may call and request a copy of any Office of Civil Rights policy document.

We requested a policy document, The Conference Call on Race Specific Scholarships Provided by Florida Atlantic University and the Oregon State Board of Higher Education, and then a lengthy number there. We were told those are not public documents.

Mr. WILLIAMS. Then I will check on that.

Senator SIMON. OK. Again——

Mr. WILLIAMS. Senator, if I could, there is one reason. Those are open investigations, and we have not provided—and I think we can understand why it may be inappropriate to provide documentation regarding investigations that are ongoing.

Senator SIMON. But these, at least one of them, the Oregon statement, has had a lot of attention. I think the public is entitled to have the basis for whatever you are doing in the State of Oregon situation.

Mr. WILLIAMS. It depends on the document. But as I said, I would be more than willing to look at it.

Senator SIMON. All right. I guess the general thrust of what I am saying here is I want strong leadership, and I don't want leadership that is going to impair the opportunity of minorities. I have the uneasy feeling that we are moving in the opposite direction.

The statement on minority scholarships, I think did great harm to this Nation. We have to reverse that. That has not been reversed. It has been partially reversed. We still have a way to go.

What I want you to do—and you have a heritage to be proud of—is to stand up for that heritage and make sure that everyone else who is an African-American or Hispanic-American or Asian-American or a woman or a person with disabilities, that they have every opportunity in our society.

That is what your office is designed to do, and I want you to be a champion in that cause. That is what I don't sense we are getting yet, real candidly.

Mr. WILLIAMS. Senator, let me suggest to you that I, too, want that office to live up to its promise. However, I think that in providing leadership to that office, that it is incumbent upon me to ensure that we protect the civil rights of all Americans.

We may disagree on the issue of minority-targeted scholarships. I firmly believe that it is in the best interests of this country that we be very careful when we venture into the area of race, because fundamentally race to me is a bankrupt currency for making public policy decisions.

But the law does allow for a number of ways in which race can be used in order to make decisions. So I would hope that we do not necessarily—but we may—differ. That if we differ on that particular issue, I would hope that that is not deemed to be a lack of leadership.

We have provided leadership. We are now providing more compliance reviews than we have at least in the last year, and we are moving that line back up. We are providing leadership by now focusing our attention on high-priority issues that the office has not focused on in the past.

We are providing leadership by dealing with our complaint load, even within the constraint of resources, we are providing leadership by telling our regional directors that you have to continue to monitor cases even after you get corrective action plans, and not just put them off to the side.

We are providing leadership by getting out into the community and talking about fundamental civil rights issues that a number of people have not talked about. One of the issues that is a principal issue here today is the one of ability grouping. I would imagine the witnesses from the GAO may testify to say that the Office of Civil Rights had not done not one ability-grouping compliance review in the last 5 years. This year we are doing eight. And I would suggest to you that is leadership.

But we may very well disagree as it relates to minority-targeted scholarships, because I do indeed believe that the question of race is one that we must be very careful about, and on that one there may be some disagreement.

But I would not suggest, and I would not agree, that that is incumbent to saying that there is a lack of leadership in the office.

Senator SIMON. No. 1, I want those lines to move up. I want people at the grassroots in your organization to feel that the leadership in the office is not reluctant leadership, but is strong leadership.

It may be that the perceived feeling on the part of some who work for you that there is a lack of strong leadership may deal with the philosophy. It is important in this Nation that Washington University do what it is doing.

I serve on the board of regents of a small college in Nebraska, Dana College in Nebraska. It is a small liberal arts college, where the question of providing scholarships for a few native Americans came up, to get into the field of teaching, which is extremely im-

portant to native Americans. And the question arose, can we do that as a result of what was said on minority scholarships?

Anyone who doesn't believe we ought to be providing better opportunity for native Americans in this country hasn't recognized that we have a problem, and that we ought to address in very specific terms some of these problems.

Now, we have to be sensitive as we do it, as you suggest, but we need to stand up and make sure that opportunities are there for everyone.

We have a declining percentage of black high school graduates going on to college. We have a declining percentage of Hispanic high school graduates going on to college. Nobody can tell me that is good news. We have to turn that around, and I want your office to be part of turning that around.

Mr. WILLIAMS. We are going to do that.

Senator SIMON. Thank you.

Our next witness is Mr. Franklin Frazier from the General Accounting Office. Thank you, Mr. Frazier. We are very pleased to have you here, and if you will identify for the record your colleagues who are here with you.

STATEMENT OF FRANKLIN FRAZIER, DIRECTOR OF EDUCATION AND EMPLOYMENT ISSUES, HUMAN RESOURCES DIVISION, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Mr. FRAZIER. Thank you, Senator Simon. I have with me on my left Barry Bedrick, who is our Associate Counsel for the General Accounting Office that works in the human resources division, and Mr. Richard Wenning, who is responsible for leading our work on within-school discrimination.

I have a full statement that I would like to submit for the record, and I would like to take about 5 minutes or so to summarize that statement for you.

Senator SIMON. You bet. We will enter the full statement in the record.

Mr. FRAZIER. Mr. Chairman, we welcome the opportunity to discuss the results of our work on within school discrimination. I will begin by briefly describing the process used by the Office of Civil Rights to enforce Title VI of the Civil Rights Act of 1964.

I will then focus my comments on one, the extent of possible within school discrimination in the Nation's elementary and secondary schools. Two, the adequacy of OCR's enforcement activities regarding such discrimination, and more specifically, we will focus on ability-grouping and tracking investigations, and three, our recommendations for improving OCR's enforcement activities.

This information will be described in more detail in a report we will be issuing in another couple months or so.

Schools assign students to ability-group classes using a variety of practices. When OCR investigates whether a school's ability-grouping practice violates Title VI, it usually first determines if the number of minority students in lower-ability classes is sufficiently disproportionate to warrant further investigation.

If so, OCR then assess whether the ability-grouping practice is educationally justified, accordant to certain criteria. OCR has gen-

erally found an ability-grouping practice to be educationally-justified when the grouping is based on objective measures that are nondiscriminatory and educationally relevant, two, when they are determined by nondiscriminatory application of the measure, and three, when they show results that benefit the students.

If an investigation finds that an ability-grouping practice does not meet any of the three criteria, OCR generally finds the school district to be in violation of Title VI regulations.

When a violation is found, OCR usually enters into an agreement with the district on corrective action. After such an agreement is reached, OCR policy guidance requires a regional office to monitor the school district until OCR verifies that a district's corrective action has been fully implemented and has corrected the violation.

Mr. Chairman, as our chart on the left suggests, data available to us indicate many potential violations of Title VI. Our analysis of OCR's 1986 survey data, the most recent data available, shows a disproportionate number of minority students in some classes in more than half of the Nation's school districts.

In addition, research conducted at Johns Hopkins University indicates that about ten percent, or about 1,700 of the Nation's middle schools, assign students to ability-group classes in a potentially discriminatory manner.

Our review shows that OCR enforcement efforts have been inadequate. In particular—there is another board, Senator, that goes with this—OCR has conducted an insufficient number of compliance reviews. Second, OCR has not issued Federal regulations on ability grouping. Three, OCR internal policy guidance on how to conduct investigations is insufficient. Four, OCR's monitoring of correction action plans are often delayed and incomplete.

Title VI regulations require OCR to conduct compliance reviews whenever it has information suggesting possible civil rights violations, but the number of such reviews is hardly commensurate with the evidence that I have just cited on the previous chart. In fact, since 1985, OCR has conducted only one ability-grouping or tracking compliance review.

Voluntary compliance among local school officials is hampered by the fact that Title VI regulations contain no provisions outlining practices schools should use in assessing students on the basis of academic ability or achievement level. Well-meaning school administrators may be violating the law unintentionally.

Regulations implementing the Emergency School Aid Act of 1976 had specified allowable practices, but these regulations were removed in 1981 when the emergency school aid program was consolidated into a block grant.

In addition, enforcement is inconsistent because OCR has issued little policy written guidance for its regional offices to follow on within school discrimination investigations. This contributed to the inconsistencies we found in how regional offices investigated and resolved ability-grouping and tracking cases.

Even when discriminatory practices were identified and corrective actions were agreed to, OCR may have allowed the discriminatory student assignment practice to persist because of insufficient monitoring. OCR's monitoring of school districts' corrective action

was often delayed, sometimes never completed, and frequently considered a low priority by regional office staff.

For example, we reviewed 15 ability-grouping or tracking complaint investigations that required monitoring. In four of these cases, or about 25 percent, we were unable to find evidence that the required monitoring was complete or that the discriminatory student assignment practice was stopped.

Mr. Chairman, based on our findings, our draft report makes three recommendations for the Secretary of Education. First, we recommend that the Secretary of Education issue Title VI regulations that identify procedures schools should follow for assigning students to classes on the basis of academic ability or achievement level.

Second, we recommend that the Secretary of Education direct the Assistant Secretary for Civil Rights to develop written policy guidance that specifies the appropriate procedure for OCR regional offices to use when investigating and resolving within school discrimination cases.

And last, we recommend that the Secretary direct the Assistant Secretary for Civil Rights to enforce agency policy requiring OCR regional offices to monitor school districts until they verify the approved corrective action have been fully implemented and have corrected identified violation.

Now OCR has announced a national enforcement strategy, which came out in December 1990, that makes several within school discrimination issues—including ability-grouping—a high priority. This enforcement strategy also includes plans to develop written policy guidance for regional offices to use in investigation Title VI issues and improved monitoring practice.

We believe these are steps in the right direction, and we really hope that they implement them as quickly as possible.

Senator Simon, that concludes my summary of my statement.

[The prepared statement of Mr. Frazier follows:]

PREPARED STATEMENT OF MR. FRAZIER

A disproportionate number of minority students in our nation's public elementary and secondary schools are in lower-ability classes and special education programs. This has led to congressional concern about student resegregation resulting from within-school discrimination. The Department of Education's Office for Civil Rights (OCR) is responsible for ensuring that educational institutions that receive federal funds comply with federal civil rights statutes, including title VI of the Civil Rights Act of 1964.

Title VI regulations require that OCR (1) investigate civil rights complaints from parents and other sources and (2) conduct self-initiated investigations, which are called compliance reviews. Title VI regulations require that OCR conduct compliance reviews whenever it has information of school districts' possible noncompliance.

EXTENT OF POSSIBLE WITHIN-SCHOOL DISCRIMINATION. Our analysis of OCR survey data shows a disproportionate number of minority students in some classes in more than half of the nation's school districts. Our analysis of recent research findings indicates that about 10 percent, or about 1,700, of the nation's middle schools ability-group students in a possibly discriminatory manner.

ADEQUACY OF OCR'S ENFORCEMENT. OCR has not met the regulatory requirement for conducting compliance reviews when it has information of possible noncompliance with title VI regulations. OCR has conducted only one compliance review related to ability grouping or tracking since 1985. Regarding its complaint investigations, OCR has insufficiently monitored school districts' corrective actions;

as a result, OCR has sometimes failed to determine if discriminatory practices it identified have been stopped.

TITLE VI REGULATIONS NEEDED. No Federal regulatory guidance exists concerning schools' ability grouping and tracking practices. GAO recommends that the Secretary of Education issue title VI regulations identifying procedures schools should use to assign students to classes on the basis of academic ability or achievement level.

OCR POLICY GUIDANCE NEEDED. A lack of internal OCR policy guidance contributed to regional offices' inconsistency in determining if school districts' ability grouping and tracking practices are discriminatory. GAO recommends that the Secretary of Education direct the Assistant Secretary for Civil Rights to develop written policy guidance that specifies the appropriate procedures to use in investigating and resolving within-school discrimination cases.

Mr. Chairman and members of the committee, little is gained from school desegregation if minority and majority students are illegally resegregated within the school building. Currently, a disproportionate number of minority students in our nation's public elementary and secondary schools are placed in lower-ability classes and special education programs. As a result, classrooms are not nearly as well integrated as some school attendance figures might imply.

Because of their concern about student resegregation within schools, the Chairman of the House Education and Labor Committee and the Chairman of its Subcommittee on Select Education asked GAO to review the Office for Civil Rights' (OCR's) title VI enforcement activities regarding within-school discrimination. am pleased that you have given us the opportunity to discuss the results of our review with you.

I will focus my comments today on (1) the extent of possible within-school discrimination in the nation's elementary and secondary schools; (2) the adequacy of OCR's enforcement activities regarding such discrimination—specifically OCR's ability Grouping and tracking [1] investigations; and (3) our recommendations for improving OCR's enforcement activities. This information is described in more detail in our forthcoming report.

Our major points are as follows:

—OCR survey data show that many of the Nation's schools have racially disproportionate classrooms, indicating possible title VI noncompliance. In addition, our analysis of research findings from Johns Hopkins University indicates that about 10 percent, or about 1,700, of the nation's middle schools ability-group students in a possibly discriminatory manner.

—OCR has not complied with its own regulations which require that it conduct compliance reviews whenever it has information of possible noncompliance in a school district. Since 1985, OCR has conducted only one compliance review related to ability grouping or tracking.

—State and local education agencies may not know which ability grouping and tracking practices are acceptable and which are not because Education has no regulations governing these practices.

—OCR regional offices' determinations of whether student assignment practices are discriminatory have been inconsistent because OCR has issued insufficient internal policy guidance. come ability grouping and tracking investigations we reviewed permitted practices that other OCR investigations found in violation.

—OCR has insufficiently monitored school districts' corrective actions. As a result, OCR has sometimes failed to determine if discriminatory practices it identified have been stopped.

Based on our findings, we recommend that the Secretary of Education

—issue title VI regulations that identify procedures schools should follow for assigning students to classes on the basis of academic ability or achievement level;

—direct the Assistant Secretary for Civil Rights to develop written policy guidance that specifies the appropriate procedures for OCR regional offices to use when investigating and resolving within-school discrimination cases.

—direct the Assistant Secretary for Civil Rights to enforce agency policy requiring OCR regional offices to monitor school districts until they verify that approved corrective actions have been fully implemented and have corrected identified violations.

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[1] Ability grouping and tracking are related practices by which students are assigned to groups or classes on the basis of an assessment of academic ability or achievement level. Ability grouping generally takes place in elementary schools, while tracking is found in secondary schools.

BACKGROUND

The Department of Education's Office for Civil Rights is responsible for ensuring that educational institutions that receive Federal funds comply with Federal civil rights statutes, including title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination on the basis of race, color, and national origin.

Title VI regulations require that OCR (1) investigate civil rights complaints from parents and other sources and (2) conduct self-initiated investigations, which are called compliance reviews. About 350 investigators in OCR's 10 regional offices conduct both kinds of investigations. Title VI regulations require that OCR conduct compliance reviews whenever it has information of school districts' possible noncompliance.

Schools assign students to ability-grouped classes using a variety of practices. If done in a nondiscriminatory manner, ability grouping can be an appropriate way of providing instruction for students with diverse abilities. When OCR investigates whether a school's ability-grouping practice violates title VI, it usually first determines if the number of minority students in lower-ability classes is sufficiently disproportionate to warrant further investigation. If so, OCR then assesses whether the ability-grouping practice is educationally justified according to certain criteria. A violation is found and corrective action sought if the practice cannot be educationally justified. OCR investigators have frequently used three criteria in examining ability-grouping practices. OCR has generally found an ability-grouping practice to be educationally justified when the grouping is

—based on nondiscriminatory objective measures that are educationally relevant for the purpose of the grouping,

—determined by the nondiscriminatory application of the measures, and

—validated by test scores or other reliable objective evidence indicating the educational benefits of the grouping.

If an investigation finds that an ability-grouping practice does not meet the three criteria, OCR generally finds the school district to be in violation of title VI regulations. When a violation is found, OCR usually enters into an agreement with the district on corrective actions that must be taken. After such an agreement is reached, OCR policy guidance requires regional offices to monitor the school district until OCR verifies that a district's corrective actions have been fully implemented and have corrected the violation(s). If an agreement cannot be reached, Education is authorized to withhold the district's federal financial assistance.

SCOPE AND METHODOLOGY

At the request of the Chairman of the House Committee on Education and Labor and the Chairman of its Subcommittee on Select Education, we assessed (1) the extent of possible within-school discrimination and (2) the adequacy of OCR's enforcement activities in eliminating such discrimination in elementary and secondary schools. We focused our study on enforcement activities relating to ability grouping and tracking.

In conducting our study, we reviewed and analyzed existing research evidence, analyzed OCR enforcement statistics, reviewed applicable OCR written policy guidance, conducted surveys of OCR investigators and regional directors, and reviewed case files on within-school discrimination investigations. The surveys pertained to OCR enforcement activities during fiscal years 1983–89. The case files we reviewed pertain to investigations closed during the same period.

STUDY RESULTS

Evidence of Possible Within-School Discrimination

In February 1990, the Acting Assistant Secretary for Civil Rights reported that the OCR survey data indicate school districts' possible noncompliance with title VI regulations. Our analyses of the 1986 survey data—the most recent available—show a disproportionate number of minority students in some classes in more than half of the nation's school districts.

In addition, our analysis of research conducted at Johns Hopkins University indicates that about 10 percent, or about 1,700, of the nation's middle schools assign students to ability-grouped classes for all academic subjects with no regrouping to reflect students' differential ability in various subjects. As a result, ability-grouped students remain with the same classmates throughout the day. OCR has found that ability grouping in this manner is discriminatory when it results in disproportionate numbers of minority students being assigned to lower-ability classes.

Number of Within-School Discrimination Compliance Reviews has Declined

The number of OCR's self-initiated compliance reviews is not commensurate with the evidence of possible within-school discrimination in the nation's schools. OCR has conducted only one title VI compliance review related to ability grouping and tracking since 1985. Compliance reviews related to all within-school discrimination issues [2] have declined during fiscal years 1983-90. During this period, the total number of such compliance reviews ranged from 60 in fiscal year 1987 to in fiscal year 1990. OCR attributes this reduction to a lack of resources and a rising complaint investigation workload.

Regulations and Policy Guidance for Within-School Discrimination Lacking

Title VI regulations contain no provisions concerning the practices schools should use in assigning students to classes on the basis of academic ability or achievement level. Consequently, state and local education agencies lack specific federal regulatory guidance regarding ability-grouping and tracking practices. Previous education regulations, however, implementing the Emergency School Aid Act of 1976, had specified allowable practices. These regulations were removed in 1981, however, when the Emergency School Aid program was consolidated into a single block grant with other categorical grant programs under the Education Consolidation and Improvement Act. The regulations had required, among other things, that ability-grouping practices meet the three criteria that OCR regional offices frequently use for determining if ability-grouping practices are educationally justified.

Furthermore, OCR has issued little written policy guidance for its regional offices to follow in within-school discrimination investigations. The lack of internal OCR guidance contributed to inconsistencies we found in how regional offices investigated and resolved ability-grouping and tracking cases. For example, OCR regional offices were inconsistent in how they determined if (1) the number of minority students in lower-ability classes was sufficiently disproportionate to warrant further investigation and (2) ability-grouping practices were educationally justified. come ability-grouping and tracking investigations we reviewed permitted practices that other OCR investigations found violated title VI regulations.

Monitoring Often Delayed and Sometimes Incomplete

Even when discriminatory practices were identified and corrective actions were agreed to, OCR may have allowed discriminatory student assignment practices to persist because of insufficient monitoring. OCR's monitoring of school districts' corrective actions was often delayed, sometimes never completed, and frequently considered by regional office staff to be low priority. For example, in 11 of the 15 ability-grouping or tracking complaint 'investigations requiring monitoring that we reviewed, the regional offices did not complete their reviews of districts' monitoring reports until 3 months or more after they were received by OCR. These delays often ranged between 8 and 16 months. Further, in four cases, we were unable to find evidence that the required monitoring was completed or that discriminatory student assignment practices were stopped. OCR investigators reported that monitoring was not a high priority because of a greater emphasis was given to completion of complaint investigations. Without timely and complete monitoring, OCR cannot determine if school districts' corrective actions are sufficient to correct identified discriminatory practices.

OCR's Current Plans to Improve title VI Enforcement

OCR announced a national enforcement strategy in December 1990 that makes several within-school discrimination issues, including ability grouping, a high priority. This enforcement strategy also includes plans to develop written policy guidance for regional offices to use in investigating title VI issues and improve monitoring practices. OCR has informed us that these planned actions are currently being implemented. We believe that OCR's plans, as presented in their national enforcement strategy, are steps in the right direction.

This concludes my statement. I will be glad to answer any questions you and the other members of the committee may have.

Senator SIMON. I thank you very, very much for an excellent statement.

What is wrong with sending a child to a lower-ability grouping class who doesn't deserve to be there?

Mr. FRAZIER. Well, I think that in your opening statement you had a very personal experience or a child who walked out and said

[2] These include ability grouping, tracking, counseling and tutoring, discipline, assignment of limited English proficient students, and assignment of students to gifted and talented and special education programs.

that I was in the dumb group. I think that obviously self-esteem is one of the problems of putting kids in these groups, and particularly putting them in a group all day long on the basis—you see, that is why we think that the criteria was pretty good to start off with.

It said that if you were going to ability group the kids, then you ought to ability group them for math, but you shouldn't use that math score to ability group them for reading or for other courses.

I think that the harm that is done is that the slow kids get slower, they lose self-esteem, and on and on and on. I think that there is just no question that the literature is showing that putting these kids into slower tracks, particularly for the slower-learning kids, doesn't do them any good. As a matter of fact, it does harm.

Senator SIMON. We tend to live up to our expectations.

Mr. FRAZIER. That is correct, the self-fulfilling prophesy.

Senator SIMON. That is correct. So if you have a disproportionate number of African-American young people, or Hispanic young people placed in classes where the expectations are low, they don't achieve their potential. So, we are dealing with something that is very fundamental.

If I can go back to that first chart, when you say half of the Nation's school districts have some racially disproportionate classrooms, what kind of numbers are we talking about, would you guess? And I know this is a ballpark.

Mr. FRAZIER. We have in the Nation, Senator Simon, there are around 17,000 school districts. So if you took half of those, you are talking approximately—since if we wanted to talk in precise numbers, there were about 54 percent—so it is close to, let us say, 7,500, 8,000 school districts where when you look at the classes, they are racially identifiable.

Senator SIMON. So we are talking potentially hundreds of thousands of young people here?

Mr. FRAZIER. Yes sir, I would say so.

Senator SIMON. At a minimum?

Mr. FRAZIER. That is correct.

Senator SIMON. I don't know if your colleagues care to comment on those numbers at all.

Mr. FRAZIER. Did you want to comment on that, Richard?

Senator SIMON. Mr. Wenning?

Mr. WENNING. Mr. Chairman, I would just point out that——

Senator SIMON. Do you want to speak into the mike?

Mr. WENNING. Certainly. That disproportion does not indicate over-representation of minority students in lower-ability groups. This simply indicates that classrooms are racially disproportionate. The second point we make pertains to particularly ability-grouping practices.

Mr. FRAZIER. But it is the first cut. In the OCR process, they first look at the composition of the school, the racial composition of the school, so to speak. Then if they find that the racial composition of the school is disproportionate, then they look at the classes to see if the classes match the racial composition of the school.

What this is telling you is that the racial makeup of the classes does not look like the racial composition of the schools. So that is the first cut. It doesn't mean that they necessarily are placed in a low-ability track, but our second factor that is on the board, the re-

search shows that they were possibly put into those track without using the criteria that is set out.

Senator SIMON. Now, in terms of the Office of Civil Rights doing the kind of a job that you say they ought to be doing, is the problem with people in that office in Atlanta, Chicago, Los Angeles, or is the problem with the message coming from on high?

Mr. FRAZIER. Well, we really can't with any degree of accuracy try to answer that question. We really just looked at their procedures. In some cases, when we did ask the people in the regional offices, they certainly said that they needed more guidance on how to conduct the investigation.

So, you know, one could take that kind of evidence and say, well, the headquarters need to get more on the ball and give us more guidance out here because this is a very tough issue for us to deal with.

But you know, sometimes we have to be very careful about the headquarters versus the field, and that sort of thing, because you can get bogged down in that argument very easily. But our look was mainly looking at the process. We did not make an assessment as to what was causing it other than the resources.

Senator SIMON. But the three indications you have, the three recommendations are for changes at the top level?

Mr. FRAZIER. Yes sir. It has to start at the top.

Senator SIMON. It has to start at the top. I think that is the fundamental.

You are going to be giving us a final report in about 2 months, you say?

Mr. FRAZIER. Yes sir. We estimate that it will take about 2 months for us to give you a final report.

Senator SIMON. OK. Ordinarily, when you issue a report, that is the last we see of GAO on that particular issue. Let me ask a procedural question. To get a kind of a monitoring follow-through, 1 year after you issue the report, should we send in a special request, or can this request here at the Subcommittee hearing do the trick?

Mr. FRAZIER. I think that this request that I am hearing right now does the trick.

Senator SIMON. OK. Well, I would like to see that then, and we appreciate your report. I think it is extremely significant. I think what you have done is a real public service, and I hope we can move ahead as a result of that.

Mr. FRAZIER. Thank you very much.

[Additional statements and material submitted for the record follow:]

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
Washington, DC, May 24, 1991.

Senator Paul Simon
462 Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR SIMON: I have been reading the written statement of Michael Williams, the Assistant Secretary for Civil Rights, which was prepared for the oversight hearing you conducted on May 17, 1991, and I wish to point out a factually incorrect statement made by Mr. Williams.

On page 9, third paragraph, under the heading "*Monitoring*," Mr. Williams says:

> The Fifth Circuit's decision in the case now styled *United States* v. *Mabus* was inconsistent with OCR's long-standing practice of looking beyond race-neutral

admissions policies to determine whether an institution has taken significant measures designed to overcome the effects of prior discrimination.

The OCR policy to which Mr. Williams refers was adopted in 1987. Prior to that time, OCR's policy required that desegregation measures actually accomplish the eradication of all vestiges of the former dual system. Simply, taking "significant measures" was not sufficient to comply with Title VI and the Fourteenth Amendment. The policy in effect prior to 1987 is contained in the *Revised Criteria*, which states in Section II. B. that

> Where there has been past de jure segregation, states are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination.

Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education, February 15, 1978.

Furthermore, the *Revised Criteria* required a statewide approach, not an institutional approach, as Mr. Williams' statement says.

I believe that you would want the record on this issue corrected. I would appreciate the inclusion of this letter in the printed record of the hearing of May 17, 1991.

Thank you.

Sincerely,

PHYLLIS MCCLURE

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

JUN 17 1991

Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

This is in response to a letter to you, dated May 24, 1991, from Phyllis McClure of the NAACP Legal Defense and Educational Fund, Inc., dealing with my written statement submitted to the Subcommittee on Education, Arts, and Humanities during the oversight hearing chaired by you on May 17, 1991. In that statement, I noted that it has been the long-standing practice of the Office for Civil Rights (OCR), in dealing with previously segregated state systems of education, to require more than the mere adoption of an open-admissions policy, but to determine whether "an institution has taken significant measures designed to overcome the effects of prior discrimination." Ms. McClure states that this "policy" originated in 1987, thus suggesting that it is not "long-standing," and is inconsistent with the Revised Criteria, adopted in 1978, which state as follows:

> Where there has been past de jure segregation, states are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination.

Ms. McClure also takes exception to my statement on the grounds that the Revised Criteria require a "statewide" rather than an "institutional" approach.

I agree with Ms. McClure on her latter point -- the Revised Criteria require a statewide approach. However, the Criteria also require that states deal with individual institutions. My use of the word "institution" was for illustration purposes only, to indicate that in reviewing a state system's admissions policies, OCR reviews the implementation of the statewide policies at each individual institution.

Concerning her former point, Ms. McClure appears to be suggesting that the Revised Criteria require OCR to insist that state systems of higher education meet the enrollment and employment

Page 2 - Honorable Paul Simon

goals contained in their desegregation plans. However, the Criteria, at Section II. D., specify as follows:

> These goals are not quotas.
>
> * * *
>
> Failure to achieve a goal is not sufficient evidence standing alone to establish a violation of Title VI.

Thus, when OCR evaluates whether a previously-segregated state system of higher education has achieved compliance with Title VI of the Civil Rights Act of 1964, and has fulfilled its duty to eliminate the effects of past discrimination, it reviews the state's progress in meeting the goals specified in the plan and whether the state has fulfilled all of the steps and measures specified in the plan. Based on this review, OCR determines whether the state is in compliance with Title VI. This procedure is in full accord with the Revised Criteria.

Sincerely,

Michael L. Williams
Assistant Secretary
for Civil Rights

cc: Phyllis McClure, Director, Division of Policy and Information, NAACP Legal Defense and Educational Fund, Inc.

LDF NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Suite 301
1275 K Street, NW
Washington, DC 20005 (202) 682-1300 Fax (202) 682-131

June 20, 1991

Senator Paul Simon
462 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Simon:

This responds to Assistant Secretary Michael Williams' letter to you dated June 17th, 1991. Mr. Williams is responding to my calling him on his misrepresentation of OCR's policy with respect to formerly de jure segregated systems of higher education.

For this Administration, anything and everything is a quota when it wants to distract attention from its real civil rights policies. That is our problem.

I see that Mr. Williams' correspondence unit is trying to smear me with the quota label in order to cover up the fact that the June 17th letter to you does not deny the accuracy of my assertion about Mr. Williams's misrepresentation.

It is a matter of public record that in a February 11, 1985 memorandum from former Assistant Secretary Harry Singleton to Office of Civil Rights Regional Offices 3, 4, 6 and 7 , Mr. Singleton said that evaluation of the states' higher education desegregation plans would not be based on achievement of plan objectives but rather on good faith implementation of measures. Committee on Government Operations, House of Representatives, Investigation of Civil Rights Enforcement by the Office for Civil Rights at the Department of Education, p. 23 (December 23, 1985).

No one in the history of higher education desegregation ever said that "plan objectives" or goals were quotas. The Office for Civil Rights should know better than to insinuate that I was "suggesting" that states had to meet quotas.

Sincerely,

Phyllis McClure

cc: Michael Williams, Esq.
Assistant Secretary for Civil Rights

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

JUL 26 1991

Honorable Paul Simon
United States Senate
Washington, D.C. 20510-1302

Dear Senator Simon:

This is in response to your letter requesting information on my timetable for providing information to school districts where the Office for Civil Rights (OCR) survey data suggest the possible use of discriminatory ability grouping practices and your offers of recommendations on the type of information to provide school districts, and staff assistance in the project.

As you are aware, I initiated as a priority activity the development of a legally supportable, well-defined policy for OCR on the issue of ability grouping, which has been needed for at least 20 years. I do not yet have a date for completion of the ability grouping policy, although a draft is currently under review within the Department. Since I plan to publish the draft policy in the Federal Register for comments, it may be several months before I issue a final policy. I will make every effort to provide information to school districts that is correct, appropriately addresses the legal issues, and does not unduly threaten or confuse educators.

I will take under advisement your suggestion to send to the selected school districts a summary of research on ability grouping and tracking and some of the alternatives to grouping and tracking. Whether this is appropriate will depend on the approach taken in our final policy document. At this time, I do not want to give the appearance of endorsing any particular grouping alternative.

I share your concern that the style and content of the letters we send to school districts about ability grouping practices is appropriate and plan to take great care in drafting the language. I appreciate your comments and your offer of staff assistance. If it is needed, I will contact you.

Sincerely,

Michael L. Williams
Assistant Secretary
for Civil Rights

400 MARYLAND AVE., SW. WASHINGTON, D.C. 20202-1100

PAUL SIMON
ILLINOIS

COMMITTEES
LABOR AND HUMAN RESOURCES
JUDICIARY
FOREIGN RELATIONS
BUDGET

United States Senate
WASHINGTON, DC 20510-1302

June 14, 1991

Michael Williams, Assistant Secretary
Office for Civil Rights
U.S. Department of Education
330 C Street, S.W., Room 5000
Washington, D.C. 20202

Dear Mr. Williams:

As you know, I am pleased that you have decided to provide information to school districts where OCR survey data suggests the possible use of discriminatory ability grouping practices. I am writing to ask about your timeline for this project, and to make a few suggestions.

It is important that the information provided to school districts not be too technical or legal. That can be both threatening and confusing. I believe the best approach would be a brief cover letter that (1) describes, simply, why the district is getting the information, (2) notes that federal law requires close scrutiny of practices that result in racially-identifiable classrooms, and (3) notes that many school districts have adopted alternative grouping practices.

Enclosed with the letter should be a summary of the OCR policy (not the whole investigative guide), and a summary of research on ability grouping and tracking and some of the alternatives. The Office of Educational Research and Improvement, or one of the federal education laboratories, could easily put together that information. It would have to be clear, of course, that federal law does not prohibit all ability grouping nor endorse any particular alternative practice.

Again, I am pleased to see some action, and I am willing to help or to lend you my staff to review draft letters, etc.

Cordially,

COPY

Paul Simon
U.S. Senator

PS/rms

230 S. Dearborn
Kluczynski Bldg. 38th Floor
Chicago, IL 60604
312-353-4952

3 West Old Capitol Plaza
Suite 1
Springfield, IL 62701
217-492-4062

6787 State St
Suite 212
East St. Louis, IL 62203
618/398-7707

250 West Cherry
Room 115-B
Carbondale, IL 62901
618/457-3653

UNITED STATES DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS,
Washington, DC, June 12, 1991.

The Honorable Paul Simon,
United States Senate, Washington, DC.

DEAR SENATOR SIMON: On May 22, 1991, following the May 17, 1991 oversight hearing of the Committee on Labor and Human Resources on the Office for Civil Rights (OCR), you forwarded, on behalf of the Committee, a list of follow-up questions. My answers to those questions are enclosed.

During the hearing you asked whether OCR would write letters to those schools identified in the biennial civil rights survey as having racially identifiable classrooms. You reference this request in your letter of May 22. The data on OCR's civil rights survey might raise a compliance question, but do not establish a violation. It is very general and incomplete information on which to reach any conclusions regarding any particular district's classroom assignment practices. Its primary usefulness to OCR is to assist us in determining which districts might be better candidates for compliance review investigations.

OCR's policy development on ability grouping is well underway and will be completed. Rather than contacting districts on the basis of survey data, I believe it would be more productive to share with each district, where the data may raise legitimate questions about its ability grouping practices, a copy of our final ability grouping policy. At the same time, I will extend to each such district an offer of technical assistance.

Much of the hearing on May 17, focused on the General Accounting Office's (GAO) draft report to Congress on OCR's enforcement activities under Title VI of the Civil Rights Act of 1964 in the area of within-school discrimination, particularly ability grouping. The draft report focuses on OCR's activities between fiscal year 1983 and fiscal year 1990, and includes various recommendations to the Secretary of Education regarding OCR. As we have discussed with GAO, and as we have reiterated in our written response, with respect to their draft recommendations that OCR develop policy guidance on ability grouping and that OCR ensure that monitoring of corrective action agreements is given a high priority, we are in complete agreement. I had already taken steps to accomplish both objectives.

Following your questioning of the GAO representatives at the hearing, you asked that they monitor OCR's response to their final recommendations. We look forward to working with GAO staff in this undertaking.

During the hearing you also expressed a concern about OCR's compliance review activities and the number of reviews the agency is conducting. I share your concern. As I testified at the hearing, the dramatic rise in complaint investigations since 1988 has seriously limited the resources available for compliance reviews. I have made significant efforts to address this problem. With the introduction of OCR's National Enforcement Strategy (NES), we are now concentrating all available resources to maximize the impact of our enforcement capabilities. The strategy identifies a short list of priority issues, several of which are within-school discrimination issues, including ability grouping, and targets them for a variety of compliance initiatives throughout the year. The strategy has enabled us to slightly increase the number of compliance reviews we are conducting this year. I anticipate further increases next year.

Several of your follow-up questions focus on OCR's proposed reorganization of its headquarters office. As acknowledged in your questions, the office was clearly in need of reorganization. The proposed structure, which greatly expands our policy development capability and combines policy, program training and technical assistance into one Service, will greatly facilitate the implementation of NES and will far better serve the critical needs of the regional offices.

Following the hearing, the Staff Director for the committee requested that I provide the committee with a copy of OCR's draft policy on ability grouping. I am happy to do so. A copy of the preliminary draft policy, which is still under active discussion in the Department, is enclosed.

Sincerely,

MICHAEL L. WILLIAMS
Assistant Secretary for Civil Rights

Enclosures

RESPONSES OF MICHAEL L. WILLIAMS TO QUESTIONS ASKED BY SENATOR SIMON

A. Compliance Review/National Enforcement Strategy

A1. You project that OCR will complete about 40 compliance reviews during fiscal year 1991. Does that include the 24 that were pending at the beginning of the year, or will OCR begin 40 new reviews? If the 24 are included in the total, how many new reviews do you eject to begin in fiscal year 1991? At the end of February, one new compliance review had been started. Do you have any updates on the actual figures for fiscal year 1991?

Response:

OCR plans to initiate at least 39 compliance reviews in fiscal year 1991, in addition to continuing to work on the 24 that were pending at the end of fiscal year 1990. Our latest report shows that 14 of the 24 fiscal year 1990 reviews are now closed. To date, OCR has initiated on-site investigations in 12 of the 39 fiscal year 1991 compliance reviews. OCR has issued data requests in most of the remaining 27.

A2. I am asking for specifics on your projections of compliance reviews because of problems in getting reliable numbers in the past. For example, in January of 1990, in OCR's response to the House Education and Labor Committee Staff Report (and I realize you were not at OCR at the time) the agency predicted that it would complete 105-128 compliance reviews in fiscal year 1990. At about the same time, in a memorandum to the Department's budget office, the Acting Assistant Secretary indicated that problems could lead to " the lowest number of compliance reviews in the history of the agency." The internal projection proved to be accurate, with only 30 finished that fiscal year. Do you know what led to the difference in public versus private projections, and have you addressed the problem in your current projections?

Response:

The 105-128 compliance review number for fiscal year 1990 was based upon regional office projections near the end of fiscal year 1989, prior to a substantial increase in complaints in fiscal year 1990 and a significant curtailment of travel funds throughout most of fiscal year 1990. However, by January 1990, the estimate of compliance reviews submitted in the response to the House, Education and Labor Committee Staff Report should have been modified to reflect this change in circumstances.

I have instituted procedures to ensure my office always has the latest available information on compliance reviews and other workload data, and that all our reports reflect accurate, up-to-date data. Our current projection of at least 39 new compliance reviews for fiscal year 1991 is based on regular communications between the staff of the Deputy Assistant Secretary and the Regional Directors. In the first seven months of this year, OCR received 2,008 new complaints, which is an 8 percent increase over the number received during the same period last fiscal year. Unless this increase in complaints continues to escalate, OCR will conduct at least 39 compliance reviews during fiscal year 1991.

A3. The chart of "projected investigative activities" for your National Enforcement Strategy shows 45 compliance reviews in fiscal year 1991: 14 Lau reviews, three on ability grouping, three on racial harassment, six on pregnant students, one on identifying special populations, seven on sex discrimination in athletics, and four on college admissions and financial aid. Are these projections still accurate?

Response:

The chart of "projected investigative activities" included significant monitoring and complaint investigation activities in addition to compliance reviews. We continue to project initiating 39 compliance reviews in fiscal year 1991, including 12 on Lau, 8 on ability grouping, 7 on pregnant students, 5 on athletics, 1 on identifying special populations, and 6 on other issues not identified in the National Enforcement Strategy.

A4. In your written testimony, you note that OCR has asked for comment on a draft policy document on ability grouping. What organizations were asked to comment and when? Do you expect to complete the policy?

Response:

Attached is the list of organizations OCR asked to comment on the draft ability grouping policy. The draft policy was sent to these organizations on May 3, 1991. A copy of the draft policy was also sent to the NAACP Legal Defense and Education Fund, Inc. on March 14, 1991. At this time the draft policy is under review within the Department and consideration is being given to publishing it for comment and public input in the *Federal Register*. We will complete the policy after we assess all comments we receive and consider the issues fully within the Department.

Attachment

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION DESEGREGATION ASSISTANCE CENTER PROJECT DIRECTORS 1990—1991

REGION I—Max McConkey, The NETWORK, 290 South Main Street, Andover, Massachusetts 01810, (817) 70-1080—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II—LaMar Miller, Metro Center, New York University, 32 Washington Place—Room 72, New York, New York 10003, (212) 998-3110—New Jersey, New York, Puerto Rico, Virgin Islands

Region III—Sheryl Denbo, Mid-Atlantic Equity Center, The American University, 5010 Wisconsin Ave., N.W., Suite 310, Washington, DC 20010, (202) 883-8317—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV—Gordon Foster, Southeastern Desegregation, Assistance Center, Kendall One Plaza, 8803 South Dixie Highway, Suite 304, Miami, Florida 33143, (305) 669-0114—Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, Tennessee

Region V—Percy Bates, The University of Michigan, School of Education, PEO—Room 1005, Ann Arbor, Michigan 48109-1259, (313) 763-9910—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI—Alicia Salinas Sosa, Intercultural Development Research Association, 5835 Callaghan, Suite 350 San Antonio, Texas 78228 (512) 884-8180—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII—Charles Rankin, Kansas State University, School of Education, Bluemont Hall, Manhattan, Kansas 66506, (913) 532-6408—Iowa, Kansas, Missouri, Nebraska

Region VIII—Shirley McCune, Mid-Continent Regional Educational Laboratory, Equity Division, 12500 E. Iliff, Suite 201, Aurora, Colorado 80014, (303) 337-0990—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX—Harriet Does Millie, Southwest Regional Laboratory for Educational Research and Development, 4885 Lampson Avenue Los Alamitos, California 90720, (213) 896-7801—Arizona, California, Nevada

Region X—Miguel Valenciano, INTERFACE, 4800 SM Griffith Drive, Suite 202, Beaverton, Oregon 97005, (503) 844-5741—Alaska, Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, Northern Mariana Islands, Trust Territory of the Pacific

Dr. Richard D. Miller, Executive Director, American Association of School Administrators, 1801 N. Moore Street, Arlington, Virginia 22209

Mr. A. Graham Down, President, Council for Basic Education, 725 15th Street, N.W., Suite 801, Washington, DC 20005

Mr. Gordon A. Ambach, Executive Director, Council of Chief State School Officers, 379 Hall of States, 400 North Capitol Street, N.W., Washington, D.C. 20001

Dr. Thomas Shannon, Executive Director, National School Board Association, 1680 Duke Street, Alexandria, Virginia 22314

Ms. Marian Wright Edelman, President, Children's Defense Fund, 122 C Street, N.W., Suite 400, Washington, D.C. 20001

Dr. Jomills Henry Braddock II, Dr. Robert E. Slavin, Center for Research on Effective, Schooling for Disadvantaged Students, The Johns Hopkins University, 3505 North Charles Street, Baltimore, Maryland 21218

Ms. Phyllis McClure, NAACP Legal Defense and Educational Fund, Inc., Suite 301, 1275 K Street, NW., Washington, DC 20005

As you indicate that OCR has begun five compliance reviews on ability grouping in fiscal year 1990, and expects to finish eight. When were each of these reviews begun, which regions are investigating them, and how were they chosen?

Response: We assume that your question intends to address the ability grouping reviews in fiscal year 1991, not fiscal year 1990. Three of the five ability grouping compliance reviews that OCR has already begun this fiscal year and the OCR components conducting them are listed below.

Mecklenburg, Virginia—Data request letter sent by OCR Region III to the District on March 19, 1991; second data request letter sent on May 24, 1991.

Dublin County, North Carolina—Data request letter sent by OCR headquarters to district on May 10, 1991.

Selma, Alabama—On-site review initiated by OCR Region IV on April 1, 1991.

We have sent data request letters to four Colorado school districts and after analyzing responses to those letters, OCR Region VIII will conduct ability grouping reviews of two of those districts this year. In addition, OCR Region X plans to conduct two ability grouping reviews in the State of Washington during fiscal year 1991. Region VII will conduct one ability grouping review.

Selection of compliance review sites is based on various sources of information, including survey data indicating potential compliance problems and information provided by complaints, state and local education agencies, interest groups, the media, and the general public.

B. Minority Scholarships

B1. Your Deputy, Richard Komer, testified before a House committee that he had told you that you "should avoid intervening with respect to the Fiesta Bowl." He said he suggested that a press release was not a good idea, that it would be better to simply call and offer technical assistance. He predicted that your strategy would "get a significant amount of public interest," and that OCR wasn't "ready to deal with that." What was your response to his advice? Did you think he was wrong about the impact of a press release, or did you think that OCR was ready to weather the storm?

Responses:

Obviously, I did not anticipate the severity of the "storm" that ensued. As I explained in my testimony to the House Committee in the same hearing, we did not know the extent to which institutions of higher education had created or accepted minority-only scholarships, only that we had received a number of recent complaints. The Department is now embarked on a full and careful review of the subject of minority-only scholarships.

B2. As I noted at the hearing, though you have stated that no policy guidance has been provided to your staff on minority scholarships, there are three such documents on the index of your Policy Codification System (PCS) that you provided to the committee. This system is used by the staff in your regional offices. Were you aware that these documents were on the system?

Response:

I became aware upon your request that these three documents were in the PCS. Given that the Fiesta Bowl letter was an offer of technical assistance and the other two documents, one involving the Oregon State Board of Higher Education, and the other involving a conference call on the Florida Atlantic University, were internal memoranda discussing open cases, none of the three should have been included among the approximately 250 documents in the PCS. These documents have been removed from the PCS as discussed below.

B3. Your National Enforcement Strategy notes that PCS has both "Current Policy" documents that are "relied upon by OCR staff in making decisions related to case investigations," and "Historical policy" documents that are obsolete or superseded by new policy. After Secretary Alexander, then a nominee, testified before our Committee that he intended to review the minority scholarship issue, you were quoted as saying that your previous decisions on the topic were "irrelevant" (Education Daily, 2/21/91). Were the Fiesta Bowl, Oregon, and Conference Call Documents put into "Historical" status?

Response:

The Fiesta Bowl, Oregon, and conference call documents have been removed from OCR's PCS to ensure that no OCR staff misunderstand the status of these documents.

B4. Your National Enforcement Strategy packet says that documents on the PCS "are relied upon by OCR staff in making decisions related to case investigations." Yet your letter of April 19 indicates that at least some of the documents are "internal" and not final. How do staff in your regional offices know which documents on the list should be relied upon, and which should not?

The only documents that should appear in the Policy Codification System (PCS) are those that reflect final agency policy that OCR staff can indeed rely upon in conducting investigations. Historical documents that may have been partially superseded are also included but are readily identifiable as such to regional staff using the system. PCS documents Nos. 00246 and 00245, which are referred to in my April 19, 1991, letter as "internal" documents (as well as the Fiesta Bowl letter) should not have been included in the system and have been removed. Staff have been advised on the appropriate procedures to follow in identifying documents to be placed in the system.

B5. You have indicated that, though no final decisions on minority scholarship cases will be made until the Secretary's review is complete, staff will continue to investigate complaints. What policy guidance does your staff now follow in developing investigative plans for these complaints?

Each regional office has been advised to contact headquarters upon receipt of a minority scholarship complaint. At this time, OCR has seven open complaint investigations on minority scholarship issues that are at various stages of the investigative process. Only one of the seven complaints has been received since December

1990. Under current operating procedures for investigating such complaints, regional offices have been advised to collect all available information with respect to the operation of the scholarship program, including information on selection criteria and the selection process. This includes conducting on-site investigations, if needed to collect the factual data. The facts are the facts, and they will be investigated. The import or relevance of those facts will depend on the legal and policy positions ultimately developed by the Department.

C. Policy Codification System

C1. At your confirmation hearing, you said that you thought that OCR's policies should be public. I was pleased to see in your National Enforcement Strategy' packet of December 11, 1990, that the Policy Codification System "will be expanded and made readily available to interested individuals and organizations." Your testimony indicates that a Policy Information Line is now open. Are all of the documents from the system now available to the public by calling the number you provided?

All documents that reflect current agency policy are available to the public by calling the number provided.

C2. At the hearing, there was some confusion about what you consider to be a policy document that is available to the public, and what is included in the list of policy documents provided to the Committee. Can you clarify that distinction?

Policy documents available to the public through the PCS System should reflect current agency policy. The two documents referred to in the April 19, 1990, response as "internal" are part of open investigation case files and do not represent final agency policy. They were provided confidentially to the Committee pursuant to its oversight authority. As discussed above, as such they should not have been included in the PCS System.

D. Elementary and Secondary Civil Rights Survey

D1. I am pleased that the 1988 survey is now complete, and the 1990 schedule is on schedule. When will computer tapes for the 1988 survey be available to outside groups?

Response:

We expect the computer tapes for the 1988 survey to be available to outside groups in August of this year. Reported data from school districts are available now and selected portions of that data can be printed upon request.

D2. I have a draft of the questionnaire for your Fall 1992 survey, and I notice a number of good additions. There is data on pregnant students and mothers, and how they're being served. There is data on advanced math and science classes (although it's not clear whether you mean true "Advanced Placement" courses that only high school juniors and seniors take, or just advanced "gifted and talented" classes). I am glad to see that limited-English-proficient students are included as a data element; however, they are only included in some questions. Why are LEP students, for example, not included in advanced placement item (table 5)?

Response:

The data item you have referenced on the draft Fall 1992 survey is intended to collect data on the Advanced Placement Program sponsored by the College Board in which only high school juniors and seniors participate. In developing this first draft of the fiscal year 1992 survey, the data category of LEP students in Advanced Placement classes was not considered as high a priority as obtaining data for LEP students in several other categories. OCR staff have met with a large number of civil rights and educational groups to obtain their comments regarding the fiscal year 1992 Survey data items. Comments about this item will be considered prior to drafting the final Survey.

D3. In my written questions to you after the confirmation hearing, I mentioned that the Assistant Secretary for Elementary and Secondary Education had testified that there is little data available on the number and location of homeless children. You indicated that you would look into including that as an item on the Civil Rights Survey. Was it considered? Why is it not included in the draft?

Response:

The OCR E&S Survey Task Force has included questions regarding the availability of data on the number and location of homeless children and children born of drug addicted mothers on a Fast Response Survey (FRS) to be sent, in cooperation with the National Center for Education Statistics (NCES), to approximately 800 school districts. The FRS asks these districts to respond to questions regarding the availability of data for homeless students with disabilities. These districts were selected through a representative sample that will enable the Department to project the extent to which such data may be available nationwide. The FRS will be sent in September 1991 and data from the survey will be available to OCR early in fiscal

year 1992. This information, including information on data about homeless children, will be considered in drafting questions for the fiscal year 1994 E&S Survey.

In addition, the 1990 Amendments to the McKinney Act directed the Department to "conduct a study to determine the best means of identifying, locating, and counting homeless children and youth OCR staff have met with the Department's staff for this project and have asked them to explore the possibility of including in the study data collection items on the race, national origin and handicap status of homeless children and youth.

D4. At your confirmation hearing, you mentioned that when discipline is "harsher toward minority students than it is to other students," that can be one of the things that can cause a student to drop out, or be pushed out, of education (p. 99-100). The Civil Rights survey does look at things like suspensions and expulsions by race, and the new draft includes data on "completers," but the survey hasn't asked for dropouts since 1978. The data the Department does have on dropouts is not very reliable. Since the Civil Rights Survey is signed under penalty of perjury, it is a way to get some better data, and that data can be used by OCR in its enforcement activities. Are you considering dropouts for the 1992 survey?

Response:

OCR's E&S survey task force recommended not including questions on dropouts as part of the fiscal year 1992 Survey for two reasons: (1) There is no consistent definition across the nation regarding the definition of a "dropout." As a result, previous attempts to obtain accurate data within the Department have met with frustration and data that is-obtained is not very useful. The difficulty school districts have in defining dropouts was the subject of a recent article in the Washington Post. (2) The Department has established a task force headed by NCES to study the issues related to identifying accurate and complete information on dropouts and to develop standard definitions for dropouts that will be used nationwide. NCES is working with the Chief State School Officers and other organizations in this effort. 0CR will review any recommendations of the task force for possible inclusion of data items regarding dropouts in the fiscal year 1994 survey.

E. Staffing and Reorganization

E1. I have reviewed OCR's management reviews, and the office is clearly in need of some reorganization. I am pleased to see that it is a priority of yours. I have some concerns, however, about plans that you are currently considering. First, it appears from draft organizational charts that a 13-attorney enforcement staff will become a 2- or 3-person litigation unit. If you carry out your National Enforcement Strategy, you will be getting into some areas where the law may not be settled. With the reduction in enforcement staff, how will OCR's litigation staff handle anything more than defensive cases?

Response:

The reorganization chart you are referencing apparently is one that lists only supervisory staff. Also, the attorney staffing number you have for the current Enforcement Division is not up-to-date. OCR's most recent staffing list, as of April 30, 1991, shows 9 attorneys assigned to the Enforcement Division in the current headquarters structure. Under the proposed reorganization, 7 attorneys will be assigned to the Litigation Staff.

I believe the reduction of two attorneys is appropriate because the new Litigation Staff will concentrate almost solely on litigation. Some of the functions currently performed by the Enforcement Division (e. g., routine FOIA requests, delegations of authority, and review of MSAP applications) will be handled elsewhere in the restructured headquarters organization (e.g., the Program operations Division). I believe the number of attorneys that will be assigned to the Litigation Staff is sufficient to handle OCR's current workload. If that case load increases substantially then, of course, I will assign additional attorney staff to handle the increase.

E2. In your testimony, you indicate that staff training is a priority this year. So far, you have provided some training for upper-level staff (Regional Directors, Chief Attorneys, headquarters Senior Staff). With the training office to be eliminated (integrated with the policy development staff), how will current field staff receive the on-going training that they need?

Response:

I assume you are referencing the Kansas City workshop on the National Enforcement Strategy fiscal year 1991 priority issues, and the Regional Directors' meeting held in Washington D.C. The training OCR has provided so far this year is far more than that stated in your Question. Each regional office sent two or more representatives to the NES workshop in Kansas City, the Chief Regional Attorney, and representatives from the investigative divisions who could best provide the workshop training to regional investigative staff. Several regions sent both an Elementary and

Secondary and a Postsecondary supervisor. These workshop participants provided the policy and investigative guidance training to the remaining staff in their regions who did not attend the Kansas City workshop.

At the Regional Directors meeting in March 1991, we discussed OCR's training priorities in a number of areas. For example, several regions have in place high quality training programs for investigative staff, and prefer to use their staff to provide that type of training. A few regions lack the resources to provide such training. At the present time, we have arranged for experienced legal and program staff from one regional office to provide investigative training to those regions that need the assistance. One cross-regional training program was completed in June. Another is being planned for July. Others will be scheduled as needed.

We also plan a major workshop this Fall with the Regional Directors, and with staff who attended the Kansas City workshop, to discuss the effectiveness of our fiscal year 1991 enforcement activities, the fiscal year 1992 priority issues, and overall planning for fiscal year 1992. Regional Directors will be required, as part of their fiscal year 1992 performance agreements, to develop and submit to headquarters a region-wide training plan for all staff.

Regional Directors have already developed plans to train all staff on the new computer hardware and software OCR has purchased for fiscal year 1991. These plans vary in approach from region to region, depending on the knowledge that a particular region's staff already has. In addition, OCR will spend about $115,000 in fiscal year 1991 on staff development courses. These courses involve everything from introduction to legal terminology for secretaries to advanced training for trial attorneys, to management courses for OCR managers and supervisors.

E3. One of the findings of the management review was that "Headquarters training staff have limited or no regional experience or other program expertise." Will this problem be addressed by your reorganization plan? under your plan, how many of your policy development and training staff do you anticipate will have significant regional and other OCR program experience? How many headquarters staff, overall, have regional experience?

Response:

The reorganization will directly address the concern raised by the management review team by placing responsibility for policy and program training into two new policy divisions. Both of these divisions will be headed by attorneys who have had years of experience developing and applying OCR's policy on a range of issues, and discussing these applications on a regular basis with Chief Regional Attorneys and other regional managers. As an added benefit, both individuals have also served as acting regional directors. Most of the policy development staff will have had substantial program experience (e. g., expertise in the interpretation and application of the statutes, regulations and policies governing OCR's case investigations). Some, in addition to the two division heads, will also have had regional field experience.

Also, we will use more regional staff experts to assist in developing and providing regional investigative training. For example, a senior attorney from our Region X office will provide an investigators training program for staff in other regional offices, and assist those offices to develop the capacity to deliver such training. Overall coordination for substantive investigative and program training and workshops will be handled by staff in the office of the Deputy Assistant Secretary, who have had substantial regional and program experience.

E4. I am concerned about the increased number of policy writers in OCR's proposed reorganization. It seems that investigators and attorneys with first-hand knowledge of schools should have a role in the development of policy documents and investigative guidance. Have you considered involving the enforcement staff more in policy guidance, rather than increasing the number of policy staff who are not involved in enforcement?

Response:

The increased staff devoted to policy development is consistent with the feedback we have obtained from our regional offices, Congressional oversight committees, OCR management review studies, and my own assessment, which indicate that more and better policy guidance should be our highest priority. Both of the policy divisions under the reorganization will be headed by attorneys who have had experience as acting Regional Directors, and who have had years of experience reviewing regional cases and discussing investigative and policy issues with Regional Directors, Chief Civil Rights Attorneys and other regional staff. They also have had lead roles in providing substantive training to regional staff on complex policy issues. Several of the current policy staff have also had experience working directly on regional case work, in addition to extensive experience reviewing such work over the past several years. Although we have not made final staff assignments to any of the

new divisions, presumably many of these staff with regional experience will end up in the new policy divisions. Under the process we have established, Enforcement Division staff may also indicate their preference to work in one of the policy divisions.

To ensure input from all OCR staff, we plan to continue the practice of sharing all significant policy and investigative documents with regional offices and headquarters components for review and comment. We also use workshops, such as the one we conducted in January 1991 in Kansas City, as an opportunity to obtain substantive, first-hand comments from regional staff.

It seems far more efficient to have an enforcement staff with a primary responsibility for the litigation of cases referred for enforcement by the regional offices rather than to have them write policy.

E5. Have you considered assigning some investigators exclusively to compliance reviews?

Response:

Deference is given to Regional Directors to decide how best to use their staff resources to get the job done. Some regions have, from time to time, devoted some staff primarily to compliance reviews, particularly when doing a large, complex investigation. However, no matter how staff are assigned, complaint investigations must be given first priority. The continued increase in complaint receipts and related activities (e.g., monitoring) in each of the past few years has left fewer staff resources available to do compliance reviews. In fiscal year 1990, OCR's complaint receipts reached 3,382, an increase of 71 percent over fiscal year 1987, the last full fiscal year before passage of the Civil Rights Restoration Act. So far in fiscal year 1991, complaint receipts are running 8 percent over fiscal year 1990.

E6. After your confirmation hearing, you provided me with a gender and racial breakdown of the staff in different units of the Department of Education. Please provide me with a racial and gender breakdown of supervisors and non-supervisorial personnel. How would these breakdowns change under your proposed reorganization?

Response:

Although I had previously provided you with racial and gender data for various components in the Department of Education, discussions with your staff indicate that your interest at this time is specific to the Office for Civil Rights (OCR). Inasmuch as your question relates to the proposed reorganization of OCR, which affects only our headquarters operation, I will provide data exclusively for headquarters.

First, please note that the proposed reorganization of OCR headquarters is not expected to result in any RIFs or grade reductions. Therefore, the same work force currently in headquarters representing the same racial and gender configuration will remain post-reorganization, albeit in a restructured organization.

Second, OCR does not maintain the type of data you have requested about its employees. I have asked the Department's EEO Office, which maintains such data, to provide this information to me for all headquarters staff. The information they provide will relate to OCR's current organization. As soon as I receive it, I will forward it to you. We have not yet determined assignments for staff in the proposed reorganization (except for supervisory/managerial personnel). Data related to subordinate staffing assignments will not be available for at least several weeks.

F. Complaints and Compliance Reviews

F1. You have said last year that OCR is required to investigate complaints, but compliance reviews depend upon your budget. While this is true under subsection (a) of Section 100.7 of the Department of Education's Title VI regulations, doesn't subsection (c) require you to investigate any specific problem that you are aware of, whether it's a complaint or not?

When OCR receives specific information that indicates a possible failure by a recipient to comply with one of the statutes we enforce, we convey that information to the appropriate regional office. When we have information that a compliance review is necessary, we will do it. However, the timely investigation of complaints continues to be our highest priority.

F2. When investigating complaints, OCR investigators must occasionally notice possible violations not noted in the complaint or perhaps not even related to the complaint. OCR is first and foremost a law enforcement agency (as you have stated), so it is appropriate (and required) that OCR follow up on these possible violations. What process exists for ensuring that those issues are investigated?

In the course of an investigation, OCR does occasionally come across specific information indicating a possible violation that is outside the scope of the planned investigation. When this occurs, depending on the stage of the investigation and the scope of the possible violation, one of the following should occur: (1) The issue may be added to the ongoing investigation and OCR's determination will be included in

the Letter of Findings; (2) the regional offices may open a new complaint, under a new docket number and conduct a separate investigation; or (3) the Regional Director may use the information as the basis for initiating a compliance review.

F3. Your staff are under a difficult, increasing workload. One way to reduce a workload is to totally solve a problem. When one person filed 1900 complaints about sex discrimination in health insurance, OCR virtually eliminated the problem. Have you considered similar full-frontal assaults on a problem, to reduce OCR's workload in the long run?

Response:

The circumstances in which OCR handled a large number of student health insurance cases is not analogous to most OCR investigations. The issue involved was a very narrow Title IX issue, and because it involved insurance, evidence collection was limited to review of a written insurance policy. Resolving the problem in these cases was expedited because we were able to precisely pinpoint the violation and to involve the insurance companies in developing specific solutions. Few, if any, of our other investigations can be that simple. For example, the amount of evidence needed to determine compliance or non-compliance with ability grouping cases or Lau cases is voluminous. To not collect the evidence would be to treat the issues in a superficial manner that is unacceptable to OCR, as well as to complainants and recipients.

As your question acknowledges, OCR continues to confront an ever- increasing complaint workload that imposes severe I imitations upon the agency's activities. Those limitations, and our recognition of the power of focusing available resources on a discrete list of priority issues, provided the impetus for the creation of OCR's National Enforcement Strategy. Under the strategy, OCR will concentrate all available resources on those limited issues. Through a combination of investigatory activity and wide dissemination of information about recipients' legal obligations, we believe OCR can make the most effective use of the resources at its disposal.

F4. How do you intend to implement 'your intention that monitoring be given as great a priority as the handling of complaints?

Response:

I have instituted several measures to ensure monitoring is given a very high priority in OCR. (1) Each Regional Director has as an objective in his or her performance agreement to monitor corrective action plans consistent with OCR's policies and procedures, and to maintain accurate, up-to-date records on all monitoring activities. The "monitoring" performance objective carries the same weight as the objectives for conducting complaint investigations and compliance reviews. (2) In May 1990, OCR issued a Revised Investigation Procedures Manual that outlines for the regions specific standards on the requirements of an acceptable corrective action plan. These plans must contain clear commitments on the part of the recipient, with sufficient specificity so that OCR knows exactly what, when, and where corrective actions will be initiated and completed. (3) I have also directed the Quality Review Team to examine regional case files for the quality of monitoring activities and to ensure record keeping systems are in place. The QRT will also make recommendations to me about how the monitoring procedures can be improved, if needed.

F5. At your confirmation hearing, one witness noted that if you run a red light 50 times and no one stops you, the light loses its effect. As a law enforcement agency, OCR needs to make it clear that it will follow up on its investigators' findings. until last year, OCR had not withdrawn federal funds from any institution for a number of years. While I am pleased that there was such an action last year, it was not based on a violation, but on the school's refusal to let OCR investigate. In fiscal year 1990, OCR issued 31 letters-of- finding indicating that the schools had corrected certain violations.

(a) How many of those letters-of-finding have been followed up with the next step in the process, a notice of opportunity for hearing?

(b) With OCR's increased attention to monitoring, investigators are likely to find additional incidents of noncompliance. Under your staff reorganization, how will headquarters handle the increased need for administrative action against schools?

(a) By regulation, the "next step" following the issuance of a violation Letter of Findings is to again attempt to achieve voluntary compliance, not to issue a notice of opportunity for hearing. Of the 31 violation Letters of Findings referenced in your question, 27 have been resolved by the submission of acceptable corrective action plans. Of the remaining four cases, negotiations are continuing in three and one case has been referred for enforcement and the recommendation to issue a Notice of Opportunity has been prepared.

(b) OCR monitors the implementation of remedial plans. That monitoring may or may not require an onsite visit. If a recipient fails to meet any plan commitment, it

is notified in writing by the regional office. If the regional office and the recipient are unable to resolve any deficiencies in the implementation of the remedial plan, a new LOT will be issued. We do not anticipate that this will be a frequent occurrence. However, where it occurs, and should it result in litigation, we believe the litigation staff would be able to accommodate the additional workload.

G. Technical Assistance and Outreach

G1. You supplied the committee with a pamphlet, "What Schools Can Do to Improve Math and Science Achievement by Minority and Female Students." How many of this pamphlet were printed? How is it being distributed?

Response:

This pamphlet was developed in fiscal year 1990 during a period when OCR budget constraints were such that we did not have the funds to print it. This year, however, OCR has funds for publications, and at least 10,000 copies of the math and science pamphlet are currently being printed by the Government Printing Office; we expect delivery in July. Additional copies will be printed as needed. Ensuring equal opportunity for minorities and women to participate in math and science courses is one of the high priority issues identified in OCR's National Enforcement Strategy for fiscal year 1992. As such, OCR will be conducting a wide variety of technical assistance outreach activities on this issue, during which the pamphlet will be disseminated. Copies of the pamphlet also will be provided in response to technical assistance requests on this issue.

G2. I am pleased that OCR will be reprinting a number of pamphlets. In the headquarters management review, it was pointed out that despite regional offices' desire for more pamphlets, managers in Washington, D.C., had a "general position" against pamphlets. Is this your position, or will new pamphlets be produced on other issues?

Response:

I have not found any evidence of a "general position" against pamphlets. Rather, OCR's budget constraints over the past few years, brought about by the tremendous increase in the complaint workload, meant that funds were not available to reprint current publications or to print new ones. Thus, while OCR disseminated more than 313,000 copies of publications during fiscal year 1989, only 3,275 copies were disseminated in fiscal year 1990 from OCR's diminished inventory.

To replenish that inventory, OCR is printing over 650,000 copies of publications this year. This includes the reprinting of existing pamphlets and OCR's implementing regulations, as well as the initial printing of the 11 new publications identified in my written statement 'before the Committee. OCR plans to continue developing new pamphlets and other technical assistance publications on various issues, which will be disseminated through direct mailings to recipients and beneficiaries, information booths at workshops and conventions, and in response to requests.

G3. On two of your fiscal year 1991 priority issues, pregnant students and identifying special populations, you have mailed letters to each of the chief state school officers across the country. These letters are included in your Policy Codification System. Are the letters the only statements of policy that you anticipate issuing on these topics? What will OCR be doing to ensure that policies on these issues reach schools, teachers, parents and students, and do not simply stop at the level of the chief state school officer?

Response:

The letter to Chief State School officers is the only policy statement we plan to make at this time. The Title IX regulatory requirements regarding pregnant students are very straightforward and do not require a lot of interpretation. We have recently (May 10, 1991) developed and sent to the regional offices a model investigative plan that they can use in their NES compliance review investigations this year. If new policy issues emerge as a result of those investigations, we will provide additional guidance as needed to address them.

In order to ensure that the message contained in the letter to Chief State School Officers reaches the public, we have reached an agreement with the National Organization on Adolescent Pregnancy and Parenting to publish a statement on providing equal educational opportunities for pregnant students as well as to print our forthcoming pamphlet on teenage pregnancy.

A similar agreement to publish statements regarding attention deficit disorder and homeless and drug exposed children with handicaps has been reached with "Children with Attention Deficit Disorder," and the National Information Center for Children and Youth With Disabilities.

We are currently drafting a public affairs outreach plan to assist us in effectively conveying OCR's message to the public.

OCR is also conducting numerous technical assistance outreach activities with local and state organizations on this issue as a priority under our National Enforcement Strategy. The requirements of Title IX related to pregnant students are specifically discussed at each of these. OCR has developed a model presentation for its staff to use in these outreach activities. The presentation will be reviewed through the Departmental clearance process and then sent to the regional offices.

G4. To my knowledge, OCR does not have any technical assistance materials on the rights of pregnant students. OCR's Chicago regional office, however, did work with local groups to develop a pamphlet, and the American Association of University Women has offered to allow OCR to reproduce a pamphlet that it developed. In order to save precious staff resources, can OCR distribute material developed by or with outside groups, if that material is accurate and appropriate? Do you intend to do so on the issue of pregnant students or any other of your priorities?

Response:

OCR's Region V did work with a local group to develop a pamphlet on civil rights issues related to pregnant students. However, OCR did not publish the pamphlet, the State of Illinois did. With appropriate approval from the Department, OCR could distribute materials developed by outside groups, if the material is accurate and appropriate. We will continue to look for opportunities to work with groups, such as the American Association of University Women, that are working on the same issues we are working on. For example, we are currently exploring the possibility of working with non-profit organizations, such as Lifetime Television, to produce technical assistance videos on some of our high priority issues. Also, as discussed in G3. above, we have reached an agreement with the National Organization on Adolescent Pregnancy and Parenting to publish a statement on providing equal educational opportunities for pregnant students as well as to print our forthcoming pamphlet on teenage pregnancy.

H. (a) Can an investigator call a complainant to find out why a complaint was not timely filed or to get other details not included with the original written complaint?

When OCR receives a complaint that has not been filed in a timely manner, the complainant is given the opportunity to furnish information concerning the delay and notified that he or she may request a waiver. It is OCR's practice to make this notification in writing. The limited bases upon which a waiver can be granted are set out in OCR's Investigation Procedures Manual.

OCR staff frequently contact complainants to obtain additional information or clarification of allegations during the course of an investigation.

(b) How do complaints that are not timely filed show up in OCR's complaint statistics? (Is it not counted as a complaint, is it a jurisdictional closure or an administrative closure?) How many complaints are dismissed on this basis?

Complaints that are not timely filed are counted as complaint receipts and administrative closures. Of the 3,166 new complaints closed during fiscal year 1990, 126 or 4 percent were dismissed on this basis.[1]

(c) Assuming it was timely filed, how would a complaint alleging sexual harassment be handled by OCR?

Like any other complaint, i.e., a determination will be made within 135 days of receipt of the complaint. If OCR determines there is a violation of Title IX, the recipient will be required to submit a corrective action plan.

H. (d) Do you think that federal law and policy relating to sexual harassment is clear enough to sufficiently address the problem?

Title IX of the Education Amendments of 1972 does not specifically address the issue of sexual harassment; however, there is a significant body of Title VII case law that OCR has found helpful in analyzing this issue. I have identified sexual harassment as a priority issue for fiscal year 2 and 0CR is currently developing additional policy and investigative guidance.

J. Title IX Athletics

We have received information indicating that, in conducting investigations of gender discrimination in athletics, OCR has interviewed witnesses in the presence of the attorney representing the school charged with discrimination. It has been alleged that the witnesses were not aware that the school's attorney was present. In addition, the charging parties claim they not only had no representation in the interviews, but that they were not even aware that the interviews were taking place.

J1. Do you agree that witness would be less likely to be candid when being interviewed in the presence of an attorney representing the school?

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[1] ACIMS closure code 81, "Complaint not timely".

A witness may be less candid when interviewed in the presence of an attorney representing the recipient; however, some witnesses prefer that recipient's counsel be present. Based upon our investigative experience, it depends upon the individual witness and their involvement or role in the matter being investigated and their relationship with the recipient institution.

As a matter of procedure, prior to asking an interviewee substantive guest ions, OCR investigators explain to interviewees their rights, including the right to be interviewed alone or in the presence of a personally designated representative. Generally, the investigator, the interviewee, any needed interpreter and the designated representative will be the only persons present during an interview. If a witness identifies recipient's counsel as a personal representative, the investigator will advise the witness that the representative may have a conflict of interest and that if the individual interferes with OCR's ability to conduct the interview they will be asked to leave.

In the OCR investigation in which the actions referenced in your letter were alleged to have occurred, the OCR investigators introduced themselves and the attorney for the institution by name and title. The interviewees, all of whom were employed by the recipient, were advised of their rights to confidentiality, however, none of them expressed a desire to be interviewed without the presence of the recipient's attorney. In response to the complainants' concern about the presence of the recipient's attorney, the regional office attempted to contact each interviewee to determine if they wanted to be interviewed again without the attorney present. The regional office was able to talk to a majority of those interviewed and none asked to be interviewed again.

J2. In general, does OCR permit attorneys representing parties charged with discrimination to accompany investigators in conducting investigations? If so, do you think this policy should be changed to avoid the resulting chilling affect on the investigation? Why or why not?

OCR does permit attorneys representing parties charged with discrimination to accompany investigators in conducting investigations. In regard to interviews (as stated above), as a matter of procedure, prior to asking the interviewee substantive questions, OCR investigators explain to interviewees their rights, including their right of confidentiality and the right to be interviewed alone or in the presence of any representative they so designate. If they choose, interviewees may authorize an attorney representing the parties charged with discrimination to be present.

J3. Do you believe that witnesses should be fully apprised as to who is present and able to hear their testimony?

OCR investigators should fully apprise witnesses as to who is present during an interview. Additionally, OCR investigators should inform witnesses of the applicable provisions of the Freedom of Information Act and the Privacy Act and notify them regarding the information that OCR may be required to release upon request under the Freedom of Information Act.

J4. Do you believe that the charging party (as compared to the party charged with discrimination) should be afforded equal access to information regarding a complaint investigation? Why or why not?

The charging party, under the Freedom of Information Act, is afforded the same access to information regarding a complaint investigation as the party charged with discrimination.

J5. In the Spring of 1990, OCR issued a Title IX Athletics investigator's Manual (Manual). The National Women's Law Center (NWLC) submitted to OCR a detailed analysis containing criticisms of the Manual. Among other things, the NWLC argued that the Manual "was apparently compiled without any consultations with experts in the field of gender equality in athletics outside of OCR, [and] contains a number of serious deviations from the governing regulations and the Policy Interpretation of December 11, 1979." In addition, the NWLC analysis stated "the Manual is deficient in its treatment of athletic financial assistance, effective accommodation of interests and abilities, and several areas regarding equivalence in benefits and opportunities. Further, its introductory section outlining an overall Approach to Athletics Investigations' misconceives the Intent and Spirit of the Regulations and the policy interpretation."

How do you respond to the criticisms raised in the NWLC analysis? Has OCR formerly responded to the issues raised by the NWLC analysis? If not, do you intend to? Does OCR intend to withdraw or modify the Manual?

In April 1990, the Office for Civil Rights issued an Title IX Athletics investigator's Manual. The manual replaced two documents which investigators had to use concurrently; the interim Title IX Intercollegiate Athletics Manual issued in July 1980

and the Guidance For writing Title IX Intercollegiate Athletics Letters of Findings, issued in March 1982.

Contrary to the NWLC assertions, the manual reflects the requirements of the Title IX statute, regulation, and is fully consistent with the Intercollegiate Athletics Policy Interpretations. It is not deficient in the treatment of any program areas, nor does it misconceive the intent and spirit of the regulations or the Policy interpretation.

The manual was issued specifically for use by OCR's investigators. The manual has some benefit for recipients as a selfevaluation tool, but it was not drafted for this purpose. The manual does not contain extensive explanations that recipients or organizations outside OCR might find useful. OCR may consider the development of a manual specifically for recipients as a self-evaluation tool when resources permit.

OCR has no intention of withdrawing the manual. The manual was issued with the expectation that it would be revised periodically. The Deputy Assistant Secretary recently issued a memorandum to OCR's regional offices and senior staff requesting recommendations for revisions to the manual now that they have used the manual in actual investigations.

In an effort to foster a cooperative relationship with the NWLC, I met with representatives in December 1990 regarding their concerns and have discussed these concerns with OCR staff. OCR will be incorporating certain suggestions made by the in a revised version of the manual. The suggestions that will be incorporated were explained in my letter of May 3, 1991, to the No other organizations have raised a concern about the manual.

UNITED STATES, GENERAL ACCOUNTING OFFICE,
Washington, DC, June 14, 1991.

The Honorable PAUL SIMON,
Chairman, Subcommittee on Employment and Productivity, Committee on Labor and Human Resources, United States Senate.

DEAR MR. CHAIRMAN: On May 17, 1991, we testified at a hearing before your subcommittee on the Office for Civil Rights' Title VI enforcement activities regarding within-school discrimination. Following that hearing, you submitted additional questions for the record. Attached are our responses to these questions. If we can be of any further assistance, please contact me at 275-1793.

Sincerely,

FRANKLIN FRAZIER
Director, Education and Employment Issues

Attachment

ANSWERS TO QUESTIONS SUBMITTED BY SEN. PAUL SIMON TO FRANKLIN FRAZIER, DIRECTOR, EDUCATION AND EMPLOYMENT ISSUES, U.S. GENERAL ACCOUNTING OFFICE

1. Q. OCR has information about schools that may have problems with in-school discrimination. Does the law require OCR to investigate, or is that up to the agency's discretion?

A. Title VI regulations require OCR to not only investigate complaints but also to conduct compliance reviews whenever it has information of possible noncompliance. As I said in my testimony, we found that OCR has not met this regulatory requirement with respect to conducting compliance reviews.

2. Q. Is there anything that would prevent OCR from contacting all these schools, through a mass mailing, to give them technical assistance or to ask them to respond to questions about their student assignment practices?

A. We are unaware of anything that would prevent OCR from conducting such a mailing.

3. Q. On the problem of within-school discrimination, OCR has not done enough in the past, and isn1t doing enough now. Are Michael Williams' plans for what to do in the future enough to have a significant impact on the problem?

A. As I said in my testimony, we think OCR's enforcement strategy is a step in the right direction. We favor making within-school discrimination issues a high priority for OCR enforcement activities and improvements in policy guidance and monitoring are certainly necessary.

OCR has informed us, however, that it will not be able to substantially increase its compliance review efforts given current staffing levels and the number of complaints received. Accordingly, OCR needs to encourage school districts1 voluntary compliance with title VI regulations. An impediment to voluntary compliance, however, is the lack of provisions in current title VI regulations on the practices schools

should use in assigning students to classes on the basis of academic ability or achievement level.

We believe that title VI regulations are needed to provide federal guidance to states and local school OCR districts on the practices schools should use in violat ability grouping and tracking students.

4. Q. Is there anything you are recommending that officials at the Department of Education have indicated they do not plan to do?

A. In its comments on a draft of our forthcoming report, Education did not agree with our recommendation to expand title VI regulations to identify practices schools should use for assigning students to classes on the basis of ability or achievement level. Education maintained that the current title VI regulations are sufficient to prosecute ability grouping cases and that it would be unnecessary and cumbersome to develop regulatory standards for the assignment of students on the basis of ability or achievement level. In addition, Education stated that OCR's outreach activities and its publication of policy guidance in the Federal Register will adequately disseminate needed information to state and local education agencies.

We disagree with Education's position on our recommendation to expand title VI regulations. While the existing regulations may be sufficient to prosecute ability grouping cases, they do not provide the 50 state and approximately 16,000 local education agencies with standards on assigning students to classes on the basis of ability or achievement level. We disagree with Education's position that outreach activities and publication of an internal agency policy document in the Federal Register will adequately disseminate needed federal guidance. Expanded title VI regulations are preferable because they are (1) specifically applicable to school practices, unlike the guidance for investigators Education expects to publish in the Federal Register; (2) made available for public comment before being promulgated; and (3) codified in a readily available form.

5. Q. Many of the civil rights groups and the House reports from the past few years have criticized OCR for declaring a violation "corrected," when the violator has only planned or agreed to correct it in the future. Did you find that to be a problem?

A. We found that OCR investigators and regional directors believe that pre-Letter of Findings negotiations and violation-corrected Letters of Findings are effective in settling investigations that identify violations. We found no problems with their use. However, as I indicated in my testimony, we found that OCR did not adequately monitor school districts' corrective actions to which districts agreed as part of the violation corrected Letter of Findings. Without adequate monitoring, OCR cannot determine if school districts implement the corrective actions they agreed to take and whether implemented actions end discriminatory practices.

6. Q. Is there anything more that Congress can do to help OCR get the job done on within-school discrimination?

A. The Congress should continue its oversight of OCR's enforcement efforts. It should ensure that OCR comply with its regulations and fully implement its national enforcement strategy as well as GAO's recommendations.

TO: OCR Senior Staff
FROM: Michael L. Williams, Assistant Secretary for Civil Rights
SUBJECT: Ability Grouping Investigative Procedures Guidance

This memorandum provides guidance to OCR staff in determining whether a recipient's ability grouping practices violate the Title VI regulation. The memorandum discusses the legal standard applicable to ability grouping issues. For the purposes of the this memorandum, ability grouping is "the practice of arranging groups of students within grade levels or classes according to their estimated capacity to learn or perform. It is a commonly understood term (in the educational community) for the pedagogical practice of sorting students into instructional groups of differing levels of difficulty, subject matter, and/or pace."[1]

Attached to the memorandum is a model investigative plan for use in ability grouping investigations. The model investigative plan is primarily designed to examine ability grouping at the elementary school level. It may also be used at the middle school, junior high, and senior high school levels if those schools place students into classes, as opposed to having students or parents select the classes. It is not designed to be used when students are ability-grouped within individual classrooms.

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[1] *Dillon County School Dist. No. I. Compliance Proceeding*, Initial Decision by Administrative Law Judge O. Eugene Powell, Jr., July 25, 1986, at 8 n.2 (hereinafter cited as *Dillon I* ALJ Decision).

I appreciate the many thoughtful comments you submitted on the draft ability grouping legal standard and investigative plan. If you develop additional concerns while using these documents, please contact Jean Peelen, Chief, Elementary and Secondary Education Branch, Policy Development Division, Policy Enforcement Service (732-1641). Headquarters staff is continuing to develop a statistical appendix for use in ability grouping investigations. I will forward this appendix to you as soon as it is available.

ABILITY GROUPING LEGAL STANDARD

I. Statement of Issue

When does a recipient discriminate against students on the basis of race, color, or national origin in its "ability grouping" practices, in violation of the Title VI regulation at 34 C.F.R. §§ 100.3(a), (b)(1)(ii), (b)(1)(iii), and (b)(2)? These sections of the Title VI regulation generally prohibit racial discrimination or segregation in Federally funded programs.

II. Disparate Impact: Establishing a Prima Facie Case

Title VI ability grouping cases apply a standard disparate impact analytical framework. A *prima facie* case is established when a facially neutral practice, such as assignment to classes on the basis of ability or achievement, has a racially disproportionate effect.[2]

A. Racially Identifiable Classrooms

The presence of racially identifiable classrooms is the most common racially disproportionate effect in ability grouping cases. In the Dillon administrative proceeding, OCR established that classes were "racially identifiable" by using a "rule of thumb" under which a class is considered racially identifiable if the percentage of black children in the class differs by more than 20 percentage points from the average percentage of black children in the grade as a whole, and by then using more complex statistical techniques to show that the racially identifiable classes were unlikely to have occurred by chance.[3]

In *Matter of Maywood School Dist. #89*, the Secretary of Education found that a school is racially identifiable if there is a statistically significant difference between the percentage of students of a particular race in the school and the percentage of such students in the district. The Secretary held that this rule applies even if the difference in percentages is less than 20 percent, as long as the difference is statistically significant. The Secretary overturned the Civil Rights Reviewing Authority's ruling that differences of less than 20 percent, even if statistically significant, were *de minimis* and insufficient to establish illegal segregation absent evidence of discriminatory intent. (*Maywood* at 8-10).

The *prima facie* case was established in a different way in *Montgomery* v. *Starkville Municipal Separate School District*, 665 F. Supp. 487 (N.D. Miss. 1987), *aff'd*, 854 F.2d 127 (5th Cir. 1988). In *Starkville*, achievement grouping in elementary and junior high schools was challenged. While the student population was equally divided between black and white children, about 80 percent of students in the high group were white, and about 80 percent of students in the low group were black. Thus, whites were assigned to high groups 1.6 times their representation in the grades as a whole. Grouping practices were found to be suspect also in *Castaneda* v. *Pickard*, 648 F.2d 989, 997 (5th Cir. 1981), where Anglo enrollment in high ability classes in kindergarten through eighth grade ranged from 2.3 to 2.6 times their proportionate enrollment in those grades.

On the other hand, in *Morales* v. *Shannon*, 516 F.2d 411, 414 (5th Cir. 1975), a court found "a dearth of proof" as to discriminatory effect where high ability junior high school classes contained about 1.5 times as many Anglos as were enrolled in the grades as a whole. (No ability grouping at all was used at the elementary school level.)

B. Isolation of Factors Causing Disparate Impact

The Supreme Court, in *Wards Cove Packing Company* v. *Atonio*, 109 S. Ct. 2115 (1989), analyzed the appropriate standard of proof in disparate impact cases under

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[2] The Supreme Court upheld a disparate impact standard under the Title VI regulation in *Guardians Association* v. *Civil Service Commission of New York*, 463 U.S. 582, 103 S. Ct. 3221, 3235 n.27 (1983). In *Matter of Maywood School Dist. #89*, the Secretary of Education recently relied on *Guardians* to uphold an administrative law judge's application of a disparate impact standard in a Title VI administrative enforcement proceeding. Because of *Maywood*, OCR will use a disparate impact standard in determining whether a recipient's ability grouping practices violate the Title VI regulation.

[3] *Dillon I* ALJ Decision at 33-38, and cases cited therein. See the attached investigative plan for a discussion of these statistical techniques.

Title VII. The Court held that a *prima facie* case must isolate the particular factors (objective or subjective) that have caused a disparate impact.[4] The Court noted that this requirement generally will not place an unrealistic burden on plaintiffs, as the Equal Employment Opportunity Commission (EEOC) requires most employers to "maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities by identifiable race, sex, or ethnic group(s)." 29 C.F.R. § 1607.4(A). This information could then be obtained through discovery.

School districts, unlike employers, are not required to maintain information that would disclose the impact that their ability grouping practices and placement criteria have on students of different races. In addition, OCR's investigatory experience indicates that school districts rarely maintain such information. Accordingly, OCR will not depend upon this information to establish a *prima facie* case under the Title VI regulation, however, OCR will attempt, whenever possible, to isolate particular factors responsible for the discriminatory effect.[5]

III. Substantial Educational Justification

Once the *prima facie* case has been established, OCR must determine whether a school district has a sufficient nondiscriminatory justification for its practices[6] which bears a manifest demonstrable relationship to classroom education. *Georgia State Conference of Branches of NAACP v. State of Georgia*, 775 F.2d 1403, 1418 (11th Cir. 1985). In *Georgia State*, the district court found that the districts' use of achievement grouping was an accepted pedagogic practice educationally necessary to accommodate the needs of the students served by the instructional groups and compensatory and remedial programs. 775 F.2d at 1418. Evidence supported the districts' contention that grouping permitted "more resources to be routed to lower achieving students in the form of lower pupil-teacher ratios and additional instructional materials," and that it improved class manageability, student and teacher comfort, and student motivation. The districts' students improved their scores on statewide tests, and individual students improved sufficiently to be reassigned to higher-level achievement groups. Also, criteria by which students were assigned to a specific class adequately measured the student's abilities in that subject. 775 F.2d at 1419-20.

The four school districts in *Georgia State* had different grouping systems. In all four districts, students were grouped in particular classes according to tests, evaluations and performance in the same subject, in closely related subjects, or in a broad variety of subjects, but there was no evidence in the record that students were assigned according to criteria not manifestly related to the subject matter taught in the specific class. This was supported by evidence of improved student scores and mobility. 775 F.2d at 1420.

In *Starkville*, the court found that grouping was acceptable for the purpose of assisting students' ability to learn where it occurred in grades one through six for only 40 percent of the student's school day, was limited to mathematics and language arts, and was based on tests of mastery in the specific subject in which the grouping occurred. The court noted that students were retested on request, that there was a special curriculum tailored to the needs of students in the lowest group, and that teachers were specially trained for this work. In addition, the court noted considerable evidence of mobility from the lowest group, which remained predominantly black, although testimony about benefit from the program was mixed. The district, pursuant to a request by OCR, was not relying on the recommendations of teachers and counselors in making placement decisions. The court found this restriction unnecessary and held that the district could rely on teacher and counselor recommendations, in addition to test scores, for placement. 665 F. Supp. at 496-502.

Similar practices in Oxford, Mississippi, were found to be acceptable. Students were grouped only in the third through eighth grades and only for language arts and mathematics, based on standardized test scores in those subjects. The court accepted testimony that the district's policies were educationally sound in theory and

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[4] The case was remanded to the court of appeals for failure to make out a *prima facie* case because the lower court had failed to determine the racial composition of the qualified population in the relevant labor market.

[5] Cf. *Watson* v. *Fort Worth Bank and Trust*, 108 S.Ct. 2777, 2797 n.10 (1988) (Blackmun, J., concurring) (requirement that plaintiff must isolate criterion responsible for discriminatory effect cannot "be turned around to shield from liability an employer whose selection process is so poorly defined that no specific criterion can be identified with any certainty, let alone connected to the disparate effect").

[6] If a particular factor causing the segregation was identified, the recipient need only justify the use of that particular factor.

as practiced in Oxford, where black and white students ranked among the highest in the state on standardized tests. The district court had found impressive movement among achievement levels during the school year as a result of test scores, classroom achievement, and parental requests. *Quarles* v. *Oxford Municipal Separate School District*, 868 F.2d 750, 754-55 (5th Cir. 1989).

In the *Dillon I* school district, reading, language arts, and mathematics scores on a standardized test were the primary basis for deciding each child's placement in a class that stayed together all day. *Dillon I* ALJ Decision at 42. The district cited the following justifications for its ability grouping system: manageability, limiting achievement levels in the classroom, facilitating teaching and learning through a reduced range of ability levels and more student time and attention, upward mobility, and favorable statewide testing results in the District as a whole. Dillon I ALJ Decision at 47-48, 70. The ALJ found that "[t]hese practices, purposes, and achievements . . . bear a manifest demonstrable relationship to classroom education and provide a sufficient non-discriminatory justification for the District's actions." . at 48.

In *Wards Cove Packing Company* v. *Atonio*, *supra*, the Supreme Court provided guidance to the lower courts on a defendant's burden, under Title VII, to justify its actions when those actions have a racially discriminatory effect.[7] The Court said that the issue is "whether the challenged practice serves, in a significant way, the legitimate employment goals of the employer." 109 S. Ct. at 2126. The Court explained that the justification must be something more than insubstantial, but something less than "essential" or "indispensable." We find no discernible difference between the standard used in *Atonio* and the "substantial educational justification" requirement derived from ability grouping case law.

IV. Pretext

An ability grouping system violates Title VI if there is an equally effective alternative educational practice which results in less racial disproportionality, if the justification proffered is shown to be a pretext for discrimination. *Georgia State*, 775 F.2d at 1417. The Supreme Court has implied that these are the same. *Atonio*, 109 S. Ct. at 2126-27 (refusal to adopt an equally effective alternative "would belie a claim . . . that their incumbent practices are being employed for nondiscriminatory reasons"). The Civil Rights Reviewing Authority similarly stated in *Dillon I* that a failure to adopt alternative practices which have a less segregative effect was a pretext for discrimination.

An alternative practice frequently suggested is that of placing students in ability groups by subject, rather than placing each student in a single ability group for the entire day. This alternative is consistent with the holding in Georgia State that for a recipient to comply with the Title VI regulation, "the criteria by which students are assigned to a specific class must adequately measure the student's abilities in that subject." *Georgia State*, 775 F.2d 1403, 1419 (11th Cir. 1985).

In *Dillon I*, the district used an ability grouping system in which each student was placed in a high, average, or low ability group for an entire day regardless of his or her strengths and weaknesses in individual subjects. The ALJ concluded that an equally effective alternative existed in grouping for math and reading based on subtest scores in those subjects and in heterogeneous grouping for the remaining subjects. This alternative would result in 31.7 percent (or using a "time weighted" theory 22.0 percent) racially identifiable classes, as opposed to 52.4 percent racially identifiable classes under the system the district was then using. *Dillon I* ALJ Decision at 60. The A- also determined that there were no significant additional costs [8] associated with the alternative. *Dillon I* ALJ Decision at 58.[8]

In addition to finding that grouping students by subject would be an equally effective alternative educational practice, the A- in *Dillon I* also found that the district's asserted justifications for its ability grouping system were pretextual because the system did not actually accomplish the district's goals. *Dillon I* ALJ Decision at 55.

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[7] This guidance was unnecessary to its decision, as the Court remanded the case because the plaintiffs had failed to establish a *prima facie* case of disparate impact.

[8] *Cf. Wards Cove*, 109 S.Ct. at 2127 ("Factors such as the cost or other burdens of proposed alternative selection devices are relevant in determining whether they would be equally as effective as the challenged practice in serving the employer's legitimate business goals").

As a practical matter, cost has not been an important factor in determining whether a recipient's ability grouping system violates Title VI. Alternative practices such as eliminating ability grouping altogether, or placing students in ability-grouped classes by subject, rather than in self-contained classes, have not been significantly more costly than maintaining a traditional ability grouping system.

The Civil Rights Reviewing Authority, however, treated "pretext" as being the same as the failure to adopt less discriminatory, equally effective alternatives.

As a practical matter, it is difficult to prove that a less segregative alternative is equally effective when the existing system appears to benefit students in the lower ability groups, such as when the test scores of students in the lower ability groups are improving or when there is significant movement between ability groups. In *Georgia State*, the appellate court held that the district court did not clearly err in finding that the less segregative alternatives proffered in that case (entirely random classroom assignment and grouping within classrooms) were not equally effective. 775 F.2d at 1420. In that case, as in *Quarles, supra*, there was evidence that the recipient's ability grouping system was benefitting the students and that there was movement between groups.

The use of subjective criteria for placing students in ability groups does not, by itself, establish pretext. Although the use of subjective criteria can mask placement decisions based on preconceived notions of how students of a particular race perform, rather than on their actual abilities or achievement levels, in *Starkville, supra*, the district court determined that teacher and counselor recommendations were additional safeguards against erroneous placement of students. 665 F. Supp. at 505. The district court expressly authorized the district to use teacher and counselor recommendations in placing students in ability groups, and the court of appeals did not disturb this decision on appeal. 854 F.2d at 130.

OCR will not routinely find districts in violation simply for using subjective criteria in placement decisions. OCR will find, however, that placement based on subjective criteria violates the Title VI regulation when the recipient's use of subjective measures for placement have a significant segregative effect, the recipient has not provided standards to guide the exercise of the decision maker's judgment, and the district cannot show that the placement of individual students was appropriate.

V. Conclusion

Based on the applicable case law, ability grouping practices that have a segregative effect may violate the Title VI regulation in the following situations: (1) when the recipient is unable to proffer an educational justification for its system; (2) when the recipient's practices do not substantially serve its legitimate educational goals; (3) when the criteria by which a student is assigned to a specific ability-grouped class do not adequately measure the student's abilities in that subject; (4) when the recipient has not applied its criteria for ability grouping consistently to all students, the inconsistent application has significantly increased segregation, and the recipient does not provide a legitimate educational justification, supported by the evidence, for the inconsistent application of its standards; or (5) when the recipient is using subjective measures for placement (such as teacher recommendations) which have a significant segregative effect, the recipient has not provided standards to guide the exercise of the decision maker's judgment, and the recipient cannot show that individual placements were appropriate. Depending on other evidence in the case, OCR may also find a violation when the recipient states that ability grouping is designed to serve a particular educational goal (such as increasing student achievement) and the recipient cannot substantiate how well the ability grouping system is achieving that goal (such as evaluating achievement of student in the lower ability groups and determining whether improvement has been made). In such cases, the recipient's system may well be a pretext for discrimination, unless the system is producing educational benefit.

The above list is not intended to be an exclusive list of situations in which a violation may be found. There may be other situations in which application of the standards in this document would mandate a violation finding.

DRAFT

INVESTIGATIVE PLAN
ABILITY GROUPING[1]
COMPLIANCE REVIEW

Preface

The following principles should be kept in mind when doing an ability grouping investigation:

(1) Prima facie case. The first step in analyzing an ability grouping case is to determine if the recipient's ability grouping practices have a racially disproportionate effect. As is stated below, OCR generally first uses the 20% "rule of thumb" to determine whether any of the recipient's ability-grouped classes are racially identifiable. For any classes that do not appear to be racially identifiable under the 20% rule of thumb, OCR performs a z-test to determine whether the class is racially identifiable. If there are any racially identifiable ability-grouped classes, OCR then determines whether the number of racially identifiable classes is statistically significant.

Several cases have used different standards to find a racially disproportionate effect. See, e.g., Montgomery v. Starkville Municipal Separate School District, 665 F. Supp. 487 (N.D. Miss. 1987), aff'd, 854 F.2d 127 (5th Cir. 1988); Castaneda v. Pickard, 648 F.2d 989, 997 (5th Cir. 1981). If these standards seem more appropriate in a particular case, feel free to use them.

(2) Educational justification and pretext. Once a prima facie case has been established, OCR examines whether the recipient has a legitimate educational justification for its ability grouping practices and, if so, whether this justification is a pretext for discrimination. Social justifications (e.g., that block ability grouping makes children feel more comfortable because they are with a single teacher throughout the day, or that placing lower-achieving children in lower ability groups allows those children

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[1]This investigative plan is primarily designed to examine ability grouping at the elementary school level. It may also be used at the middle school, junior high, and senior high school levels if those schools place students into classes, as opposed to having students or parents select the classes. For the purposes of this investigative plan, the term "ability grouping" will be used as it was in Dillon County School Dist. No. 1, Compliance Proceeding, Initial Decision by Administrative Law Judge O. Eugene Powell, Jr., July 25, 1986, at 8 n.2 (Ability grouping is "the practice of arranging groups of students within grade levels or classes according to their estimated ability to learn or perform. It is a commonly understood term (in the educational community) for the pedagogical practice of sorting students into instructional groups of differing levels of difficulty, subject matter, and/or pace").

to increase their self-esteem by having a greater chance of success) are legally insufficient justifications for ability grouping. If the recipient has no legitimate educational justification for its ability grouping system, and that system has a racially disproportionate impact, the recipient is in violation of the Title VI regulation.

The pretext determination and the educational justification determination are closely linked. OCR generally will find that the recipient's educational justification is pretextual when: (1) the recipient's practices do not substantially serve its legitimate educational goals; (2) when the recipient is using subjective measures for placement (such as teacher recommendations) which have a significant segregative effect, the recipient has not provided standards to guide the exercise of the decision maker's judgment, and the recipient cannot show that its placement decisions were appropriate; and/or (3) the recipient has inconsistently applied its ability grouping criteria, the inconsistent application has significantly increased segregation, and there is no legitimate educational justification, supported by the evidence, for the inconsistent application of its standards. OCR may also find that the recipient's justification is pretextual when the recipient states that ability grouping is designed to serve a particular educational goal (such as increasing student achievement), and the recipient cannot substantiate how well the ability grouping system is achieving that goal (such as evaluating achievement of students in the lower ability groups and determining whether improvement has been made). In such cases, the recipient's system may well be a pretext for discrimination, unless the system is producing educational benefit.

In disparate impact cases, "pretext" also means that there are alternative educational practices that serve the recipient's goals equally effectively with less discriminatory impact. For example, OCR will generally find a violation based on the existence of equally effective practices that result in less disproportionality, when the criteria by which a student is assigned to a specific ability-grouped class do not adequately measure the student's abilities in that subject, and assigning students to classes in a particular subject based on their scores in that subject alone would significantly decrease racial segregation.

(3) This investigative plan is intended only as a guide to be used in conducting investigations. The basic three-part test (disparate impact, educational justification, and pretext) is the standard for determining whether a recipient is compliance with the Title VI regulation, but the model investigative plan is only one method for obtaining and analyzing the data necessary to make a determination. If the steps outlined below seem inapplicable to a particular case, the investigative plan should be modified accordingly.

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INVESTIGATIVE PLAN

I. Case Identification Data

A. Review Number:

B. Recipient:

C. Compliance Review Team:

II. Statement of Jurisdiction

A. Federal Financial Assistance:

According to information obtained from the Federal Assistance Awards Data System, as of (date), (school district) is a recipient of financial assistance from the Department of Education. (school district) received financial assistance under the following programs: (list programs below)

B. Legal Authority:

1. Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (codified at 42 U.S.C. § 2000d-4a).

2. This investigation is being conducted under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100.

III. Statement of Allegations

Not applicable.

IV. Statement of Issue

Whether the district discriminates against students on the basis of race[2] in its "ability grouping" practices, in

[2]This model investigative plan specifically addresses racial discrimination. If discrimination based on national origin is at issue, the phrase "national origin" should be added to or substituted for race as appropriate throughout the investigative plan. Please note, however, that this investigative plan is not designed to address the specific problems involved in ability grouping limited-English-proficient students.

violation of the Title VI regulation at 34 C.F.R. §§ 100.3(a), (b)(1)(ii), (b)(1)(iii), and (b)(2).

V. Background

A. Case Chronology:

B. Recipient Background:

VI. Data Needs

A. Preliminary data request (to determine whether the recipient's schools have any racially identifiable classes).

1. Obtain the total number of students enrolled in each of the recipient's schools by grade and race.

2. Obtain a list of classes at each school. This list should provide the following information for each class: the number of students, by race; the subject taught; the designated achievement or ability level of the class, if any (e.g., high, average, low); and the race of the teacher.

B. Supplementary data request (to be used if the above data show that the recipient's schools have any racially identifiable classes).[1]

1. Find out when the ability grouping system(s) was established.

2. Obtain a description, including any goals or objectives, of the ability grouping system(s). Find out when these goals and objectives were developed.

3. Obtain any written district or school policies regarding the assignment of students to ability groups.

4. Obtain copies of any manuals, procedural guidelines, or other documents outlining ability grouping system(s) and the responsibilities of administrators, guidance personnel, and/or teachers in assigning students to classes.

[1]Where data is requested on tests and student achievement, and student movement, data should be obtained for the last three years, if available.

5. Describe the manner in which the ability grouping policy/policies were developed. This description should include the persons involved in the development of the system(s), any studies or academic support for the system(s), and the date the system was established.

6. Obtain a list of the criteria used for ability grouping. If different criteria are used for different ability groupings, the list should specify which criteria are used for which grouping. Obtain a description of the purpose, use, and relative weights placed on all criteria.

7. Obtain a description of the criteria and procedures school personnel use to determine when a student's ability group placement should be changed, and how often a student's ability group placement is reevaluated.

8. If standardized tests are used in ability grouping, obtain copies of the tests, the rating scales, and any documents the district has concerning the purpose, validity, and reliability of the tests, particularly documents from the publishers of the tests.

9. If teacher recommendations are used in ability grouping, obtain copies of any policies the recipient has established to guide teachers' decisions, and any forms used for that purpose. If other subjective criteria are used, obtain copies of any other policies guiding the decision maker's judgment.

10. Obtain a written description of the district's or school's method, if any, for assessing the educational benefits derived by students in ability groups. If standardized tests are used to assess educational benefit, obtain copies of the tests, rating scales, and any documents the school has concerning the purpose, validity, and reliability of the test. Obtain the testing schedule for each grade in which ability grouping is used.

11. Obtain any information the district has concerning whether the students in the lower ability groups have demonstrated educational gain. This information should include dropout rates of students placed in the lower ability groups, if the school keeps such statistics.

12. Obtain the names and races of students moved from one ability group to another during the past three years, the reasons they were moved, and the nature of the move (which groups they were moved to and from).

13. Obtain any available documentation about any special training required for teachers of different ability-grouped classes or any special curriculum or resources given to different classes. This documentation could include curriculum lists; descriptions of student/teacher ratios; descriptions of special books, materials, or equipment; and records of staff certifications, training, special preparation, and experience. Inform the recipient that if its position is that the ability grouping system(s) can be justified on the ground that it/they will channel more resources to lower-achieving students, it should explain how the resources it provides to lower ability-grouped classes differ from those provided to other classes, particularly other ability-grouped classes.

VII. Pre-on-site analysis

A. Determine whether any of the recipient's ability-grouped classes are racially identifiable. First use the "20% rule of thumb." Under the 20% rule of thumb, a class is racially identifiable if the percentage of children of a particular race in a class differs by more than 20 percentage points from the percentage of children of that race in that grade at that school. If a class is not racially identifiable under the 20% rule of thumb, conduct a z-test of proportions to determine whether the class contains a disproportionate number of students of a particular race.

If there is some question about the data's accuracy (for example, if it is internally inconsistent or is contradicted by other information available to the region), the investigator should attempt to resolve the inconsistency or contradiction through a supplemental data request.

B. If there are no racially identifiable classes, the compliance review can end at this point if there is no reason to question the accuracy of the data upon which the calculations are made and if there is no evidence that students of a particular race are being disproportionately placed into a particular ability

group.[4] If it appears that students of a particular race are being disproportionately placed into a particular ability group, consult ADCS for assistance in determining the probability that this placement could have occurred by chance. If the usual statistical tests show that it is unlikely that the placements occurred by chance, continue with the compliance review. Otherwise, the compliance review can end at this point.

C. If the recipient provides adequate data, find out how the recipient's ability grouping system is supposed to work.

1. How does the recipient describe the system's organization? For example, are students ability-grouped for particular subjects or are they placed in the same ability groups for the entire day? In which grades and subjects is ability grouping used?

2. What are the stated objective and/or subjective criteria for placement? Criteria frequently used for placement are test scores, grades, teacher recommendations, and parent preferences.

3. If the recipient uses standardized tests to measure individual student achievement, are those tests designed to be used for that purpose?

4. Does the system afford students the opportunity to move from one ability group to another? Are students periodically reevaluated to determine whether their ability group placements are still appropriate? If so, find out how often this reevaluation occurs. Are there ways in which students, parents, and teachers can request a change in placement?

5. If teacher recommendations are used, find out if the recipient has established any policies to guide teacher's decisions. If other subjective criteria are used, find out if there are any standards guiding the decision maker's judgment.

D. If the recipient has provided adequate data, determine the recipient's educational justification (if any) for its ability grouping system.

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[4]This could occur if the data showed that there were few children of a particular race in a school and that all (or nearly all) of these children were placed in a particular ability group.

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1. Find out the recipient's goals for its ability grouping system and how these goals were developed. Were they based on any particular academic study? When was the ability grouping system developed?

2. Recipients have justified block grouping by arguing that students feel more secure if they are grouped in a single class for an entire day or by arguing that it is easier for parents to deal with a single teacher instead of several teachers. These justifications are legally insufficient and, unless the recipient has another justification for block grouping, or unless the block grouping is producing educational benefit, the recipient is in violation of the Title VI regulation.

VIII. On-site activities

A. Interview teachers and administrators to confirm, clarify, or supplement information received in response to the data request. Talk to both teachers and administrators about the purpose of the ability grouping system used by the recipient.

B. Interview parents and students in different ability groups to obtain their perceptions of the ability grouping system and anecdotal evidence of any problems or inconsistent application of the system. Find out what, if anything, school officials have told them about the system.

C. Examine a sample of files of students placed in ability groups. This examination is to determine whether the recipient consistently and correctly applies its criteria for placing students in a particular ability group and whether the recipient's ability grouping system actually achieves its stated goals.

While examining each student file, the investigator would note the student identifier, the student's race, pertinent information for each ability grouping criterion, and percentile scores on standardized achievement tests (including subtest scores, if available).

If the recipient has used subjective criteria for placing students but has provided no guidance to decision makers on the exercise of their discretion, examine whether the placement of students is consistent with their test scores. If not, obtain

an explanation of any inconsistencies. If the inconsistencies become apparent only after the data is analyzed following an on-site investigation, a follow-up on-site visit or follow-up written questions will be necessary to obtain an explanation of the inconsistency.

D. If an examination of student files on-site seems to show that the recipient applies its ability grouping criteria inconsistently, and that this inconsistent application has a segregative effect, ask teachers and administrators, as appropriate, for an explanation of the inconsistent application. If the inconsistency becomes apparent only after the data is analyzed following the on-site investigation, a follow-up on-site visit or follow-up written questions will be necessary to obtain an explanation of the inconsistency.

IX. Post-on-site analysis

A. If it was not possible to determine pre-on-site how the ability grouping system is supposed to work, do this analysis now, following the procedures in Section VII.A.3.

B. Determine whether the recipient applies its ability grouping criteria consistently to students of all races.

1. If the data suggest that a recipient has not applied its criteria consistently, and the inconsistent application has significantly increased segregation,[5] obtain an explanation for the inconsistent application. In the absence of a explanation for the inconsistencies, the recipient is in violation of the Title VI regulation.

2. If the recipient provides an explanation, examine the relevant evidence to determine whether the explanation appears to be valid. If the evidence does not support the explanation provided by the recipient, the recipient is in violation of the Title VI regulation.

C. Find out, if possible, whether any particular ability grouping criterion or practice is responsible for increasing segregation or for the systematic placement

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[5]If it is not obvious that the inconsistent application has significantly increased segregation, contact ADCS for assistance.

of students of a particular race into a particular ability group level.

1. The responsible ability grouping criterion may be obvious from an examination of the data. For example, the data may show that, as a practical matter, the test score always determines a student's placement, and that most black students have scored lower than most white students on that particular test.

2. If the responsible ability grouping criterion is not obvious from an examination of the data, OCR will treat the ability grouping system as a whole as responsible for the segregation.

3. An ability grouping practice which is frequently responsible for increasing segregation is block grouping -- that is, placing students in a single ability group for the entire day, rather than grouping them for individual subjects based on the student's strengths or weaknesses in those subjects. Examine students' subtest scores to determine whether classes would be less segregated if students were ability grouped for English/language arts and math and were heterogeneously grouped for other subjects.

D. Find out whether the recipient has an educational justification for its system(s) (if this analysis was not performed pre-on-site) and for any individual criterion which causes segregation. If it does not, the recipient is in violation of the Title VI regulation. If it does:

1. Find out how the ability grouping system and its goals were developed. Were they based on any particular academic study?

2. Find out why the recipient is using any criterion or practice identified as causing segregation.

3. Recipients have justified block grouping by arguing that students feel more secure if they are grouped in a single class for an entire day or by arguing that it is easier for parents to deal with a single teacher instead of several teachers. These justifications are legally insufficient and, unless the recipient has another justification for block grouping, the recipient is in violation of the Title VI regulation.

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E. Find out whether the recipient is carrying out its ability grouping system in a manner which could reasonably be expected to achieve its goals, and whether its goals are actually being achieved.

Suggested analyses of two frequently cited goals for ability grouping are given below. If the recipient provides different goals from those discussed below, the investigator should use a common-sense approach to determine whether the recipient's actions are reasonably calculated to meet its goals and whether those goals are actually being met. If a recipient is maintaining an ability grouping system which has a segregative effect, and this system is not substantially meeting the recipient's goals, the recipient is in violation of the Title VI regulation.

1. If the recipient states that ability grouping is designed to provide extra help to students in the lower groups so that they can increase their achievement levels and catch up with the students in the other groups, examine the following: (a) Does the recipient actually provide extra resources for students in the lower ability groups? Is the student/teacher ratio different in this group than in others? Do teachers of those groups have any special training or certification? How do they compare to teachers of the other ability groups? Does the recipient provide any other extra resources to students in the lower ability groups? (b) Are students in the lower ability groups actually showing increased achievement levels, as documented by test scores?[6] (c) Is there significant movement between groups? [Use a binomial test if the number of students who have moved from one level to another is less than 35. If the number of such students is at least 35, use a z-test of proportions.] (d) Is there any evidence that ability grouping had any effect on dropout rates? (e) Is there any other evidence that the ability grouping system is providing educational benefit to students?

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[6]Generally, if a class's median score has increased by two percentile points on two versions of the same standardized test, given on each occasion in accordance with the designer's instructions, OCR will view the class as having shown academic gain. (A gain of two percentile points is not being set forth as a compliance standard, however.) If possible, examine subtest scores rather than the overall score on a test battery.

2. If the recipient states that ability grouping is designed to narrow the range of achievement in the classroom, determine whether it actually does so. This determination will require an examination of individual student files, including a comparison of individual subtest scores in different subjects, if available. This justification for ability grouping is most likely to be suspect if a recipient groups students in the same class for more than one subject. In such cases, grouping students together for an entire day may narrow the range of achievement for one subject such as reading, but not narrow the range of achievement for other subjects, such as mathematics.

F. Determine whether the recipient has violated the Title VI regulation. Refer to the attached legal standard to make this determination. In general, OCR has determined that it will find that ability grouping practices which have a segregative effect violate the Title VI regulation in the following situations: (1) when the recipient is unable to proffer an educational justification for its system or for any ability grouping criterion or practice which increases segregation; (2) when the recipient's practices do not substantially serve its educational goals; (3) when the criteria by which a student is assigned to a specific ability-grouped class do not adequately measure the student's abilities in that subject; (4) when the recipient has not applied its criteria for ability grouping consistently to all students, the inconsistent application has significantly increased segregation, and the recipient does not provide a legitimate educational justification, supported by the evidence, for the inconsistent application of its standards; and/or (5) when the recipient is using subjective measures for placement (such as teacher recommendations) which have a significant segregative effect, the recipient has not provided standards to guide the exercise of the decision maker's judgment, and the recipient cannot show that its placement decisions were proper. OCR may also find a violation when the recipient states that ability grouping is designed to serve a particular educational goal (such as increasing student achievement), and the recipient has made no effort to evaluate how well the ability grouping system is achieving that goal (such as evaluating achievement of student in the lower ability groups and determining whether improvement has been made). In such cases, the recipient's system may well be a pretext for discrimination, unless the system is in fact producing educational benefit. This list of situations in which violations may be found is not intended to exclude the

possibility that violations may be found in other situations based on the application of the attached legal standard.

X. Proposed Activity Schedule

A. Preliminary data request letter to be mailed to recipient by (date). (Number) days for response.

B. On-site on or about (date).

C. Issuance of LOF on (date).

D. Enforcement.

XI. Clearance (Docket No. __-__-_____)

Senator SIMON. Thank you very, very much. Our hearing stands adjourned.

[Whereupon, at 2:01 p.m., the committee was adjourned.]

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ISBN 0-16-035469-2